CLERK'S COPY.

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 910

MILWAUKEE COUNTY

vs.

M. E. WHITE COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED APRIL 26, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 910

MILWAUKEE COUNTY

vs.

W. E. WHITE COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Certificate from U. S. C. C. A., Seventh Circuit	1
Statement of facts	1
Question certified	2
Judges' signatures	2
Exhibit No. 1—Declaration filed in D. C. U. S., Northern Illinois.	3
Exhibit No. 2—Motion to dismiss filed in D. C. U. S.	12
Exhibit No. 3—Memorandum, Woodward, J., D. C. U. S.	13
Clerk's certificate (omitted in printing)	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 2, 1935.

—6302-C

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 5322. OCTOBER TERM, 1934, JANUARY SESSION, 1935.

MILWAUKEE COUNTY, *Appellant*,
vs.
M. E. WHITE COMPANY, a corporation, *Appellee*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

To the Honorable the Supreme Court of the United States:

On this appeal a question of law has arisen concerning which this Court is in doubt and desires the advice thereon of the Supreme Court.

The relevant facts out of which the legal question grows are:

Appellant, Milwaukee County, as a county of the State of Wisconsin and a citizen of said state, brought suit in the District Court of the United States for the Northern District of Illinois against appellee, M. E. White Company, a corporation, citizen, and inhabitant of the State of Illinois.

Appellant filed its declaration, wherein it was alleged that there was diversity of citizenship of the parties, and that the matter in controversy, exclusive of interest and costs, exceeds the sum of $3,000;

That on January 26, 1933, in the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction, a judgment was rendered in favor of said Milwaukee County and against the said M. E. White Company in the sum of $52,156.84, together with costs, and that such judgment was for income taxes duly assessed against the said M. E. White Company upon its income earned by said M. E. White Company upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state.

After the entry of said judgment in appellant's favor in the Circuit Court of Milwaukee County, appellant brought its said suit on said judgment in the United States District Court

for the Northern District of Illinois, and attached hereunto, and marked Exhibit 1, is a copy of the declaration which it filed in its said action in the said District Court.

On August 8, 1933, said M. E. White Company, by its attorneys, entered its appearance in the said District Court, and on December 11, 1933, filed its motion in said District Court to dismiss the said suit upon the ground, *inter alia*, that "IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action," which motion to dismiss will more fully appear from a copy of said motion hereunto attached as Exhibit 2 hereof.

Upon the hearing of the said motion to dismiss, the District Court considered only the proposition "That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action," and decided that the District Court will not take jurisdiction thereof, and dismissed the action, giving judgment for costs against appellant. The memorandum of the Court's decision will more fully appear from a copy thereof which is hereunto attached as Exhibit 3 hereof.

The question concerning which this Court desires advice of the Supreme Court is:

Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?

The clerk of this Court is directed to transmit a certified copy hereof to the Supreme Court.

EVAN A. EVANS
WILLIAM M. SPARKS
SAMUEL ALSCHULER
Judges of the United States Circuit Court of Appeals for the Seventh Circuit.

Chicago, Illinois,
April 12, 1935.

EXHIBIT 1.

SECOND AMENDED DECLARATION.

Milwaukee County, plaintiff, by William A. Zabel, Oliver L. O'Boyle, Clark J. A. Hazelwood, and James G. Culbertson, its attorneys, complains of M. E. White Company, a corporation, existing under and by virtue of the laws of the State of Illinois, defendant, of a plea of debt:

First Count.

Paragraph One—The ground upon which the jurisdiction of this Court depends is diversity of citizenship. Plaintiff, Milwaukee County, is now and was at all the times herein mentioned a county created, organized and existing under the laws of the State of Wisconsin, and a citizen of said State. Defendant, M. E. White Company, is a corporation organized and existing under the laws of the State of Illinois, is a citizen and inhabitant of said State and has a regular and established place of business in the City of Chicago in said State.

Paragraph Two—The matter in controversy herein exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3000.00).

Paragraph Three—Whereas, heretofore to-wit: at the January Term in the year 1933, of the Circuit Court of the County of Milwaukee, in the State of Wisconsin, the same being a court of general jurisdiction duly created and organized under the laws of said State, to-wit: on the 26th day of January, A. D. 1933, a certain judgment was entered in favor of the plaintiff herein, and against the defendant herein, the record of which is in words and figures as follows, to-wit:

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

SUMMONS.

The State of Wisconsin, to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service,

and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

GEORGE A. BOWMAN,
District Attorney,
O. L. O'BOYLE,
Corporation Counsel,
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Attorneys for Plaintiff.

P. O. Address:
Court House,
Milwaukee,
Milwaukee County,
Wisconsin.

Filed Nov. 1, 1932, C. C. Maas, Clerk.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

Filed Nov. 1, 1932. C. C. Maas, Clerk.

The plaintiff by George A. Bowman, District attorney and O. L. O'Boyle, Corporation Counsel, and Clark J. A. Hazelwood, for cause of action against the above named defendant alleges and respectfully shows to the Court:

1st. That plaintiff is a municipal body corporate, organized and existing under and pursuant to the Constitution and laws of the State of Wisconsin;

2nd. That plaintiff is suing herein for the collection of delinquent income taxes heretofore levied against the defendant by the authorities of the State of Wisconsin as provided by law and is duly authorized so to do.

3rd. That the defendant is a corporation organized and existing under and pursuant to the laws of the State of Illinois and duly licensed to transact business within the State of Wisconsin as a foreign corporation.

4th. That heretofore and on or about the 4th day of February, 1932, an assessment of income tax indebtedness against said defendant corporation was duly made by the Tax Commission of the State of Wisconsin; that notice of said assessment was given by registered mail to the defendant corporation on or about said date, Feb. 4, 1932; that thereafter the defendant corporation objected to said assessment as made, and, in accordance with the law, a hearing upon the said assessment, as an appeal, was held on the 9th day of June, 1932 before the Wisconsin Tax Commission at Madison, Wisconsin; that at said hearing the defendant herein was given due opportunity to submit proof in support of its objections to said assessment; that on the 29th day of July, 1932 the Tax Commission entered its order with respect to said appeal, upholding the said assessment for income tax, and overruling the defendant corporation's objections thereto; that on or about said 29th day of July, 1932, written notice of the said decision of the Tax Commission was given the defendant by registered mail; that more than thirty days have passed since the giving of said notice and no appeal has been taken, and that, therefore, the right of the defendant to further contest the validity of said assessment has now expired.

5th. That pursuant to the said decision of the Wisconsin Tax Commission and under said assessment, there was duly placed upon the tax roll of the Treasurer of the plaintiff county the said assessment against the defendant corporation as theretofore determined by law and by action of the tax commission as aforesaid: $49,204.84; that the said amount of $49,204.84 appeared on the September 1, 1932 roll and the same became delinquent on October 1, 1932, that no part of said assessment of $49,204.84 has been paid and that there is now due and payable from the defendant to this plaintiff the sum of $49,204.84 plus interest and penalties as provided by law.

Wherefore plaintiff demands judgment against the defendant in the sum of $49,204.84 with interest and penalty as provided by law, together with the costs and disbursements of this action.

GEORGE A. BOWMAN,
District Attorney,
O. L. O'BOYLE,
Corporation Counsel,
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel.

State of Wisconsin }
Milwaukee County } ss.

PATRICK McMANUS, being first duly sworn on oath says that he is the County Treasurer of Milwaukee County, the plaintiff in the above entitled action, and makes this verification for and on its behalf and is duly authorized so to do; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his knowledge except as to such matters therein stated on information and belief, and as to such matters he believes it to be true; that the reason he makes this verification is that the plaintiff is a body corporate and he is such officer as aforesaid; that the sources of his knowledge and the grounds of his belief are his connection with the affairs of said County as such officer, and the records and papers of said plaintiff County in his possession.

PATRICK McMANUS.

Subscribed and sworn to before me this 26th day of October, A. D. 1932.

FRANK G. GREGORY,
Notary Public, Milwaukee County, Wisconsin.

Filed Nov. 1, 1932 C. C. Maas, Clerk.

UNITED STATES OF AMERICA.

State of Wisconsin }
Department of State } ss.

To All to Whom These Presents Shall Come, Greetings:

I, Theodore Dammann, Secretary of State of the State of Wisconsin, and Keeper of the Great Seal thereof, do hereby certify that on the 28th day of October, A. D. 1932, there were received by me, pursuant to the provisions of section 226.02 of the Wisconsin Statutes, two copies of Summons and Complaint in an action brought in the Circuit Court for Milwaukee County, wherein Milwaukee County, is plaintiff and M. E. White Company, defendants.

I further certify that the fee of Two Dollars required by the Wisconsin Statutes has been paid.

I further certify that one of said copies has been by me filed in this office; and the other of said copies was by me

forthwith mailed to M. E. White Company one of the defendants named in said action, in an envelope with the postage thereon duly paid, directed to 1735 Fullerton Ave., Chicago, Illinois, the place named in the last sworn statement of said corporation filed in this department as the principal place of business.

In Testimony Whereof, I have hereunto set my hand and affixed the great seal of the State of Wisconsin at the Capitol, in the City of Madison, this 28th day of October, A. D. 1932.

THEODORE DAMMANN;
(Seal) *Secretary of State.*

Filed Nov. 1, 1932, C. C. Maas, Clerk.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County, *Plaintiff,*
vs.
M. E. White Company, a foreign corporation, *Defendant.*

AFFIDAVIT OF NO ANSWER.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

CLARK J. A. HAZELWOOD, being duly sworn on oath, deposes and says that he is one of the attorneys for the plaintiff in the above entitled action; that defendant's time for answer, demurrer or other appropriate pleading has expired; that no such pleading has been filed nor served; that defendant is in default.

CLARK J. A. HAZELWOOD.

Subscribed and sworn to before me this 25th day of January, 1933.

J. J. MALLOY,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

The summons and verified complaint herein having been filed in the office of the Clerk of this court on the 1st day of November, 1932, showing proof of service on the defendant foreign corporation by the filing of a copy thereof with the office of the Secretary of State of the State of Wisconsin, and by the transmission of a copy thereof by the secretary of state by mail to the defendant at 1735 Fullerton Avenue, Chicago, Illinois prior to November 1, 1932, it appearing that said cause of action herein in this state and that said service on the defendant foreign corporation has been in compliance with the statutes relating thereto, and no answer or other pleading having been served on the plaintiff's attorney, and no appearance having been entered herein by the defendant of anyone on its behalf, and an affidavit of no answer being on file;

It further appearing that more than twenty days have expired since said service on the defendant corporation, Now, Therefore, on motion of plaintiff's attorneys, and upon testimony and other proof duly introduced before that branch of this court presided over by the undersigned and upon all the pleadings, record and file herein, the Court hereby makes and files the following Findings of Fact and Conclusions of Law:

1. That plaintiff is a municipal body corporate, organized and existing under the laws of this state and that plaintiff is duly authorized by law to prosecute this action for income tax delinquencies.

2. That defendant is a foreign corporation, licensed to do business in the state of Wisconsin and that the cause of action herein arose within this state.

3. That, against the said defendant, M. E. White Company, an assessment of income tax indebtedness was duly made by the tax commission of the State of Wisconsin, upon due notice of same given by registered mail on February 4, 1932; that the said defendant appealed from said assessment, to the Wisconsin Tax Commission, which upheld the said assessment and gave notice of said affirmance to the defendant by registered mail on July 29, 1932; that more than thirty days have passed since the latter notice and no further appeal has been taken.

4. That the amount of said assessment for delinquent income tax indebtedness as heretofore determined by the said tax commission is $49,204.84.

5. That said assessment was duly placed upon the tax roll of plaintiff county as of September 1, 1932 in said amount of $49,204.84 and the same became delinquent on October 1, 1932 and no part of same has been paid.

Conclusions of Law.

That plaintiff, Milwaukee County is entitled to judgment on its complaint herein in the sum of $49,204.84 plus a penalty of 2% and plus interest computed at the rate of 1% per month from and after October 1, 1932 and that judgment may accordingly be entered as follows:

Income tax delinquency	$49,204.84
Interest and penalty	2,952.00
Total damages	$52,156.84

Let judgment be entered accordingly, together with plaintiff's costs.

Dated at Milwaukee, Wisconsin, January 26, 1933.

By the Court,

DANIEL W. SULLIVAN,
Circuit Judge.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

JUDGMENT.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

It appearing that this Court, the Hon. Daniel W. Sullivan, Circuit Judge presiding, has made and filed Findings of Fact and Conclusions of Law directing that judgment be entered in favor of the plaintiff and against the defendant,

Now, Therefore, on said findings of fact and conclusions of law, and on all the record, files and proceedings, in the above entitled action,

It Is Hereby Ordered, Determined and Adjudged that the plaintiff, Milwaukee County, do have and recover judgment against the defendant M. E. White Company as follows:

Principal amount	$49,204.84
Int. and penalty	2,952.00
Total damages	$52,156.84

together with the plaintiff's costs hereby taxed and allowed in the sum of $21.09.

Dated at Milwaukee, Wis.

By the Court,

JAS. L. MCCORMACK,
Clerk.

By N. J. SAVIGNAC.

Statement of Judgment.

Damage	$49,204.84
Int. and penalty	2,952.00
Total	$52,156.84
Costs	21.09
	$52,177.93

Judgment entered and docketed this 26th day of January, 1933 at 10:45 o'clock A. M.

Paragraph Four—And plaintiff avers that said judgment is still in full force and effect, as by the record and proceedings thereof still remaining in said Court, will more fully appear; that said judgment has not been in any wise reversed, vacated or satisfied.

Paragraph Five—And therefore an action has accrued to plaintiff to demand and have from the defendant the sum aforesaid, to-wit: Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84) with interest at the rate of six per cent (6%) per annum from and after the 26th day of January, 1933, together with costs in the sum of Twenty One Dollars and Nine Cents ($21.09).

Paragraph Six—Yet the defendant, though requested, has not paid the said sum or any part thereof to the plaintiff but has wholly neglected and refused and still neglects and refuses so to do.

To the damage of the plaintiff in the sum of Sixty Thousand Dollars ($60,000.00),

Wherefore, plaintiff brings this suit.

Second Count.

Paragraph One—The ground upon which the jurisdiction of this Court depends is diversity of citizenship. Plaintiff, Milwaukee County, is now and was at all the times herein mentioned a county created, organized and existing under the laws of the State of Wisconsin, and a citizen of said State. Defendant, M. E. White Company, is a corporation organized and existing under the laws of the State of Illinois, is a citizen and inhabitant of said State and has a regular and established place of business in the City of Chicago in said State.

Paragraph Two—The matter in controversy herein exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3000.00).

Paragraph Three—Whereas, the plaintiff to-wit: at the January Term in the year 1933 of the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction duly created and organized under the laws of said State, to-wit: on the 26th day of January, A. D. 1933, it was adjudged that the plaintiff do have

and recover of and from the defendant its damages in the sum of Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84) with interest on said sum at the rate of six per cent (6%) per annum from and after said date, and the further sum of Twenty One Dollars and Nine Cents ($21.09) for plaintiff's costs in that behalf expended (a copy of which said judgment is set forth in the first count of this declaration and made a part hereof by reference) whereof said defendant was and stands convicted as by the record and proceedings thereof remaining in said court more fully appear, an exemplified transcript of which plaintiff now stands ready to produce in open court, which said judgment still remains in full force and effect, not reversed, satisfied or otherwise vacated and the said plaintiff has not obtained any payment or satisfaction thereof or upon said judgment so recovered as aforesaid, whereby an action has accrued to the said plaintiff to demand and have from said defendant the said sum of Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84), and the interest and costs aforesaid.

To the damage of the plaintiff in the sum of Sixty Thousand Dollars ($60,000.00),

Wherefore, plaintiff brings this suit.

WILLIAM A. ZABEL,
OLIVER L. O'BOYLE,
CLARK J. A. HAZELWOOD,
JAMES G. CULBERTSON,
Attorneys for the Plaintiff.

EXHIBIT 2.

MOTION TO DISMISS.

And now comes M. E. White Company, a corporation, defendant herein, by Montgomery, Hart, Pritchard & Herriott, its attorneys, and moves the court to dismiss the above entitled cause and for grounds of its said motion, the said defendant shows:

I. That under the laws and statutes of the State of Wisconsin, Milwaukee County, plaintiff herein, is without power or authority to maintain this action.

II. That under the laws and statutes of the State of Wisconsin, this action must be brought by the County Treasurer of said county, in the name of said county.

III. That under the laws and statutes of the State of Wisconsin, the attorneys, or either of them, for the plaintiff herein, are without authority to prosecute this action.

IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action.

For the above and diverse other good and sufficient reasons appearing on the face of the second amended declaration, and other of plaintiff's pleadings heretofore filed herein, this defendant prays that the above entitled cause be dismissed at the costs of the plaintiff.

MONTGOMERY, HART, PRITCHARD & HERRIOTT,
Attorneys for M. E. White Company, Defendant herein.

EXHIBIT 3.

MEMORANDUM.

July 16, 1934.

WOODWARD, *District Judge:*

This is a motion to dismiss an action brought by Milwaukee County, Wisconsin, against the M. E. White Company, a corporation, on a judgment obtained against the White Company in the Circuit Court of Milwaukee County, Wisconsin.

The pleadings show that on January 26, 1933 Milwaukee County, Wisconsin, recovered a judgment against the defendant in the Circuit Court of Milwaukee County, Wisconsin in the sum of $52,156.84 for delinquent income tax, penalty and interest, assessed against the defendant for state income tax indebtedness by the Tax Commissioner of Wisconsin. This suit is brought upon that judgment.

It is urged, in support of the motion, that this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action.

It seems to be well settled that neither the State of Wisconsin, nor Milwaukee County, could maintain an action either in the State Courts of Illinois, or in a Federal Court sitting in Illinois, to collect a State Income Tax levied and assessed under the laws of Wisconsin. Income taxes are levied and collected to support the government. Taxes are imposts, not debts. The income tax law of Wisconsin is one of the revenue

laws of that state. The enforcement of the revenue law rests, not on consent, but on force. The revenue laws of one state have no force in another. The uniform rule is that the tax laws of one state cannot be given extra territorial effect so as to make collections through the agency of the courts of another state. *Moore* v. *Mitchell*, 30 Fed. (2) 600; *State of Colorado* v. *Harbeck*, 232 N. Y. 71; *In the Matter of Bliss*, 202 N. Y. Supp. 185; *New York Trust Company* v. *Island Oil and Transport Corporation*, 11 Fed. (2) 698.

The recent case of *Moore* v. *Mitchell, Supra*, contains a careful statement of the law on this subject.

Does the fact that the revenue demand of the state has been reduced to judgment, and the judgment is sued upon in a sister state, or in a Federal Court sitting in a sister state, change the well established rule above referred to?

In the case of *Huntington* v. *Attrill*, 146 U. S. 657, the court says:

> "The essential nature and real foundation of a cause of action, indeed, are not changed by recovering a judgment upon it."

To the same effect is the language of the court in the case of *State of Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, where it is said:

> "The essential and nature and real foundations of a cause of action are not changed by recovering judgment upon it; and the technical rules which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim) from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."

In the tentative draft of the "Restatement of the Law of Conflict of Laws", Sec. 621 (Draft 34, October 16, 1930) it is said:

> "Action on Judgment on Government Claims. No action can be maintained on a foreign judgment which has been obtained in favor of a state, a state agency, or a private person on a cause of action created by the law of a foreign state as a method of furthering its own governmental interests."

"Furthering its own governmental interests" clearly includes the collection of taxes.

Attention has been called to the fact that the draft of the Restatement of the Law has not been fully approved, but it embodies the law as laid down in the cases above referred to.

In substance, the plaintiff invokes the aid of this court to enforce, within the State of Illinois, the revenue laws of Wisconsin. Under the authorities, as the court understands them, this cannot be done.

The precise question submitted by this record has not, so far as the court can find, been passed upon by the Supreme Court of the United States. The conclusion here reached is, I believe, supported by the adjudications already made.

I am not unmindful of the recent holding of the Supreme Court of New Jersey in the case of *People* v. *Coe Manufacturing Company*, 162 Atl. 872, which held that a suit might be maintained in the New Jersey courts on a judgment based on a franchise tax claim of the state of New York. Until this decision, or one embodying the same principle, is affirmed by the Supreme Court of the United States, I prefer to follow what I believe to be the rule announced by the Federal Courts.

The motion to dismiss will, therefore, be sustained.

FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 32

MILWAUKEE COUNTY,

v.

M. E. WHITE COMPANY

On Certificate From the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF OF APPELLANT, MILWAUKEE COUNTY

WM. A. ZABEL,
District Attorney,
Milwaukee County, Wisconsin;
O. L. O'BOYLE,
Corporation Counsel,
Milwaukee County, Wisconsin;
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Milwaukee County, Wisconsin;
Attorneys for Milwaukee County.

JAMES E. FINNEGAN,
Attorney General,
State of Wisconsin;
HERBERT H. NAUJOKS,
Assistant Attorney General,
State of Wisconsin;
JAMES G. CULBERTSON,
of Chicago, Illinois,
of Counsel.

MAYER PRINTING CO., MADISON, WIS.

INDEX AND SUMMARY OF ARGUMENT

PAGE

PRELIMINARY STATEMENT 1

STATEMENT OF THE FACTS 1-3

The appellant, Milwaukee County, brought suit in the United States District Court of Illinois against the M. E. White Company, an Illinois corporation. The action is one on a judgment obtained by Milwaukee County in the courts of the State of Wisconsin in the sum of $52,156.84 and such judgment was for income taxes duly assessed by the State against the M. E. White Company upon its income earned by said Company upon its business transacted in the State of Wisconsin under a license to transact business within that State.

A motion to dismiss this suit was made by the White Company upon the ground, among others, that the United States District Court will not exercise jurisdiction of or take cognizance of the subject matter of the action.

QUESTION INVOLVED 3

Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?

PROPOSITION OF LAW 4

PAGE

An action brought in a United States District Court in and for the State of Illinois for the purpose of enforcing a valid judgment predicated upon a tax liability of appellee corporation to appellant, Milwaukee County, under the laws of Wisconsin, wherein appellee as a "foreign corporation" transacted business as a licensee of said state, is a suit "of a civil nature" within the meaning of Section 24 of the Judicial Code and the right to maintain such action is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit" 4

MATERIAL CONSTITUTIONAL AND STATUTORY PROVISIONS 4-6

ARGUMENT 6-30

I. THE UNITED STATES DISTRICT COURT HAS JURISDICTION OF AND MUST ENTERTAIN THE PENDING ACTION, IT BEING ONE OF A "CIVIL NATURE" WITHIN THE MEANING OF THE UNITED STATES JUDICIAL CODE (28 U. S. C. A. sec. 41) 6-9

a. The term "civil" as used in the U. S. Judicial Code, is meant to cover all causes not criminal 6-7

b. The pending action is not one in which redress is sought for a wrong done the people of Wisconsin by reason of violation of its criminal code but the Illinois Company's liability for taxes based on income earned within the State of Wisconsin flows from its own acts in entering Wisconsin and agreeing to comply with

PAGE

Wisconsin laws in order to obtain a license therein and transacting its business therein, out of which it earned its profits which became taxable under the Wisconsin income tax law 7-8

c. An action on a judgment based on tax liability is entitled to cognizance in the United States District Court of a sister state, the same as other civil judgments 9

II. THE TERM "CIVIL ACTION" IS A BROAD AND COMPREHENSIVE ONE AND TAX DEMANDS (AND THEREFORE JUDGMENTS BASED THEREON) ARE WITHIN ITS SCOPE 10-14

a. Authorities, on the meaning of the term "civil action," are agreed that it is a broad and comprehensive term and the tax demands (and therefore judgments thereon) are within its scope 10-11

b. An action is "civil" rather than "penal" when the real object is not punishment, the fact that a government is plaintiff being immaterial 12-13

c. Once a cause of action is reduced to judgment it merges into liability of a contractual nature, whether predicated upon tort, contract, common law, or statutory liability 13

d. A judgment for taxes is a debt and if the state or a subdivision thereof obtains a personal judgment for taxes, such judgment be-

PAGE

comes a debt and an action on such judgment is a civil suit ----------13-14

III. UNDER THE ESTABLISHED LAW THE WISCONSIN JUDGMENT IS FREE FROM ATTACK EXCEPTING ON THE FOLLOWING GROUNDS: (1) LACK OF JURISDICTION IN THE ORIGINAL STATE COURT; (2) FRAUDULENT PROCUREMENT, OR, (3) PAYMENT; AND THE MERITS OR VALIDITY OF THE CLAIM UPON WHICH THE JUDGMENT IS FOUNDED CANNOT BE EXAMINED 14-15

a. The right of appellant, Milwaukee County, to sue herein is established by Article IV, sec. 1 of the U. S. Constitution relating to "full faith and credit" ---------- 14

b. Under the full faith and credit clause of the U. S. Constitution it is clear that the judgment herein is free from attack excepting on the following grounds: (1) lack of jurisdiction in the original state court; (2) fraudulent procurement, or (3) payment; and the merits or validity of the claim upon which the judgment is founded cannot be examined---------- 15

IV. THE JUDGMENT HEREIN IS ENTITLED TO BE ENFORCED UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION (ART. IV, Sec. 1) BECAUSE SUCH JUDGMENT WAS RENDERED BY A COURT OF RECORD OF GENERAL JURISDICTIONAL

PAGE

POWERS WITH FULL JURISDICTION OVER BOTH THE PARTIES AND THE SUBJECT MATTER AND BECAUSE TAX JUDGMENTS DO NOT FALL WITHIN THE CLASS OF PENAL CLAIMS.....16-22

a. An action on a judgment based on tax liability is not within the same class as a "penal claim," such as the one involved in Wisconsin v. Pelican Insurance Co. 127 U. S. 276.... 16

b. Because of the ease of rapid transportation of persons and property it is extremely important to the several states that their revenues be protected by authorizing them to institute actions on judgments based on tax liabilities in the courts of sister states.....17-18

c. The authorities establish that the full faith and credit clause of the U. S. Constitution has been given a broad construction and even suits involving certain penal judgments have been allowed 18-22

V. THE RECENT DECISION OF PEOPLE V. COE MANUFACTURING COMPANY SUPPORTS APPELLANT'S POSITION AS TO THE ENFORCEABILITY OF THE JUDGMENT HEREIN WITHIN THE STATE OF ILLINOIS 23-26

a. In the recent case of People v. Coe Manufacturing Company, 172 Atl. 198, the New Jersey court held that the State of New York might bring an action in a New Jersey

PAGE

court on a New York judgment based on taxes imposed by a New York Statute 23-25

b. The language in the decision of the court in the Coe case supports the position of Milwaukee County as to the enforceability of the Wisconsin judgment within the State of Illinois 25-26

VI. TEXTWRITERS AND AUTHORITIES ARE IN ACCORD WITH THE VIEW THAT JUDGMENTS BASED UPON TAX CLAIMS ARE ENTITLED TO FULL FAITH AND CREDIT IN THE COURTS OF SISTER STATES 27-30

a. Comments by law writers in reviewing the decision in the Coe case sustain the view that judgments based upon tax claims are entitled to full faith and credit in the sister states 27-28

b. Federal courts are often called upon to decide controversies involving the interpretation of state revenue acts and individuals are permitted to sue state and municipal agencies in such courts in actions involving tax assessments. If such actions are suits of a civil nature when the tax debtor is a plaintiff, it is manifest that suits involving tax assessments are also civil actions when the tax debtor is defendant 28-29

CONCLUSION 30-31

CASES CITED

PAGE

Boston & Maine R. R. v. State, (1910) 75 N. H. 513, 77 Atl. 996, 31 L. R. A. (n.s.) 539, Ann. Cas. 1912A 382 11

Broderick v. Rosner, 79 L. Ed. (Adv. Ops.) 619, 55 Sup. Ct. Rep. 589 16-17

Buick Motor Co. v. Milwaukee County et al., (1930) 43 Fed. (2d) 385 29

Christmas v. Russell, (U. S. 1866) 5 Wall. 290, 18 L. Ed. 475 15

Colorado v. Harbeck, (1921) 133 N. E. 357, 232 N. Y. 71 30

Converse v. Stewart, (1911) 192 Fed. 941 (aff. 197 Fed. 152, 118 C. C. A. 212) 15

Fauntleroy v. Lum, (1908) 210 U. S. 230, 52 L. Ed. 1039, 28 S. Ct. 641 15

Florida Central & P. R. Co. v. Reynolds, (1902) 183 U. S. 471, 46 L. Ed. 283, 22 S. Ct. 176 10

Foster v. Driscoll, (1929) 1 K. B. 470 30

Fox's Estate, In re (1910) 162 Mich. 531, 127 N. W. 668 .. 11

Hanley v. Donaghue, (1885) 116 U. S. 1, 29 L. Ed. 535, 6 S. Ct. 242 15

Healy v. Root, (Mass. 1831) 11 Pick. 389 20

Hienl v. Terre Haute, (1903) 66 N. E. 450, 161 Ind. 44 .. 13

PAGE

Huntington v. Attrill, (1892) 146 U. S. 657, 36 L. Ed. 1123, 13 S. Ct. 224 ..... 12, 15

Interstate Savings & Trust Co. v. Wyatt, (1917) 63 Colo. 1, 164 Pac. 506 22

Jernigan v. Commonwealth, (1905) 104 Va. 850, 52 S. E. 361 12

Jordan v. Muse, (1909) 88 Ark. 587, 115 S. W. 162 22

Kennedy v. Supreme Lodge, (1920) 252 U. S. 411, 64 L. Ed. 638, 40 S. Ct. 371 15

Knowles v. Longsport Gas, Light & Coke Co., (U. S. 1873) 19 Wall. 58, 22 L. Ed. 70 15

Mariner v. Milwaukee, (1911) 146 Wis. 605, 139 N. W. 442 10

Martin's Will, In re 255 N. Y. 359, 174 N. E. 753 29

Mutual Life Ins. Co. v. Harris, (1877) 97 U. S. 331, 24 L. Ed. 959 15

Palmolive Company v. Conway et al., (1932) 56 Fed. (2d) 83 29

People v. Coe Manufacturing Co., (1934) 10 N. J. Misc. 1161, 162 Atl. 872, affirmed in 172 Atl. 198 (1934) 23, 24-25, 26

Percival's Estate, In re (1917) 108 S. C. 39, 93 S. E. 243 11

PAGE

Renaud v. Abbott, (1886) 116 U. S. 277, 29 L. Ed. 629, 6 S. Ct. 1194 15

Rhodes v. O'Farrell, (1886) 2 Nev. 60 14

Roche v. McDonald, (1928) 275 U. S. 449, 72 L. Ed. 365, 48 S. Ct. 142 15

Schuler v. Schuler, (1904) 209 Ill. 522, 71 N. E. 16 21-22

Spencer v. Brockway, (1824) 1 Ohio 122 18-20

State ex rel. Globe Steel Tube Co. v. Lyons, (1924) 183 Wis. 107, 197 N. W. 578 10

State ex rel. Kochtitzky v. Riley, et al., (1907) 203 Mo. 175, 101 S. W. 567, 12 L. R. A. (n.s.) 900 11

State of Indiana ex rel. Stone v. Helmer, (1886) 21 Iowa 370 20-21

Thompson v. Whitman, (U. S. 1873) 18 Wall. 457, 21 L. Ed. 897 15

Tom Tong, Ex parte (1883) 108 U. S. 559, 27 L. Ed. 826, 2 S. Ct. 871 13

Wiscart v. D'Auchy, (1796) 3 U. S. (3 Dall. 321) 240, 1 L. Ed. 619 11

Wisconsin v. Pelican Insurance Co., (1888) 127 U. S. 265, 32 L. Ed. 239, 8 S. Ct. 137 ..... 7, 16

STATUTES AND CONSTITUTIONAL PROVISIONS

PAGE

Wisconsin Statutes

Sec. 71.01 6

Sec. 226.02 5-6

U. S. Constitution

Art. IV, sec. 1 ..... 3, 4, 6, 7, 14, 16, 18

TEXTS CITED

Columbia Law Review 782 (1929) 27

Conflict of Laws, Beale, Vol. 2, p. 1410 29

3, p. 1567 29

p. 1638 29

18 Cornell Law Quarterly 581 (1933) 28

1 Corpus Juris 930, note 22 12

sec. 8 13

931, note 26 13

1 Freeman on Judgments (4th ed.) sec. 217, p. 384 9

44 Harvard Law Review 1265 27

46 215 27

33 Michigan Law Review (June 1935) p. 1147 8-9

p. 1149 14

Vol. XII, No. 1, New York Law Review (1934) p. 137 27

1 Ruling Case Law 325-326 13

PAGE

28 U. S. C. A. sec. 41.....3, 4, 5, 6, 7

Words & Phrases, Vol. 1 (2d ser.) 708.....12

(4th ser.) 412.....12

Vol. 2 (1st ser.) 1182.....12

(2d ser.) 1249.....13

1874.....14

(3rd ser.) 66.....12

42 Yale Law Journal 1131-1132-1133.....27-28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 32

MILWAUKEE COUNTY,

v.

M. E. WHITE COMPANY

On Certificate From the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF OF APPELLANT, MILWAUKEE COUNTY

PRELIMINARY STATEMENT

This case comes on for hearing in this court on a certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

A STATEMENT OF THE FACTS

The relevant facts in this controversy, as stated by the United States Circuit Court of Appeals for the Seventh Circuit, are as follows:

> "Appellant, Milwaukee County, as a county of the State of Wisconsin and a citizen of said state, brought suit in the District Court of the United States for the Northern District of Illinois against appellee, M. E. White Company, a corporation, citizen, and inhabitant of the State of Illinois.

"Appellant filed its declaration, wherein it was alleged that there was diversity of citizenship of the parties, and that the matter in controversy, exclusive of interest and costs, exceeds the sum of $3,000;

"That on January 26, 1933, in the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction, a judgment was rendered in favor of said Milwaukee County and against the said M. E. White Company in the sum of $52,156.84, together with costs, and that such judgment was for income taxes duly assessed against the said M. E. White Company upon its income earned by said M. E. White Company upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state.

"After the entry of said judgment in appellant's favor in the Circuit Court of Milwaukee County, appellant brought its said suit on said judgment in the United States District Court for the Northern District of Illinois. * * *

"On August 8, 1933, said M. E. White Company, by its attorneys, entered its appearance in the said District Court, and on December 11, 1933, filed its motion in said District Court to dismiss the said suit upon the ground, *inter alia,* that 'IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action' * * *.

"Upon the hearing of the said motion to dismiss, the District Court considered only the proposition 'That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action,' and decided that the District Court will not take jurisdiction thereof, and dismissed the action, giving judgment for costs against appellant* *. *."

It will be noted that the Circuit Court of Appeals observed in its statement of facts above quoted, that the income taxes were *duly* assessed against the appellee

company which is now a judgment debtor of the appellant county in the Wisconsin Court and that these taxes were based upon the debtor's income earned *"upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state."*

QUESTION INVOLVED

The question stated in the certificate is as follows:

> "Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?"

Appellant asserts that this action, being based upon a valid Wisconsin judgment, is entitled to the cognizance of a United States District Court in and for the State of Illinois. The appellee, on the contrary, urges that because the Wisconsin judgment is predicated upon a tax owed by the appellee to appellant under Wisconsin revenue laws, the District Court in and for Illinois is without jurisdiction to entertain the suit. It is claimed by appellee that this action is not a "suit of a civil nature" within the meaning of Section 24 of the Judicial Code (28 U. S. C. A. Sec. 41) and that the so-called "full faith and credit" provision of the United States Constitution (Art. IV, Sec. 1) gives no support to appellant's case.

This argument of appellee was sustained by the United States District Court (Certificate: pages 13-15).

Appellant here contends that the District Court erred in denying jurisdiction to this suit and that the question certified should therefore be answered in the affirmative.

PROPOSITION OF LAW

The question certified should be answered in the affirmative for the reason that the action at bar is clearly within the jurisdiction of the United States District Court because:

An action brought in a United States District Court in and for the State of Illinois for the purpose of enforcing a valid judgment predicated upon a tax liability of appellee corporation to appellant, Milwaukee County, under the laws of Wisconsin, wherein appellee as a "foreign corporation" transacted business as a licensee of said state, is a suit "of a civil nature" within the meaning of Section 24 of the Judicial Code and the right to maintain such action is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit."

MATERIAL CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provision here involved is as follows:

Article IV, Section 1, United States Constitution:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Act of May 26, 1790, Ch. 11; 28 U. S. C. A. No. 687, provides for the proper authentication of a judgment of a sister state and further states that all such authenticated judgments *"shall have such faith and credit given to them in every court within the United States as they have by law or usage in the court of the state from which they are taken."*

The portion of the Judicial Code herein involved is as follows:

Sec. 24, Judicial Code (28 U. S. C. A., sec. 41):

> *"Original Jurisdiction*: The district courts shall have original jurisdiction as follows:
>
> "(1) *United States as plaintiff; civil suits at common law or in equity.* First: Of all suits of a *civil nature,* at common law or in equity, brought by the United States, or any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and (*a*) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (*b*) is between citizens of different States, or (*c*) is between citizens of a State and foreign States, citizens, or subjects * * *." (Italics ours.)

Section 226.02 of the Statutes of Wisconsin regulating the admission of foreign corporations to do business in the State of Wisconsin provides, in part, as follows:

> "(3) Statement Filed; Attorney for Service of Process. A foreign corporation desiring a license shall also file with the secretary of state a sworn statement by its president, secretary, treasurer or general manager stating:

"• • •

"(h) That as a condition of its being permitted to begin or continue doing business in this state, it will comply with all the laws of the state applicable to foreign corporations."

Section 71.01, Wisconsin Statutes, provides, in part, as follows:

"There shall be assessed, levied, collected and paid a tax on all net incomes as hereinafter provided, by every person • • • by every nonresident of the state, upon such income as is derived from property located or business transacted within the state, except as hereinafter exempted. • • •"

ARGUMENT

I. THE UNITED STATES DISTRICT COURT HAS JURISDICTION OF AND MUST ENTERTAIN THE PENDING ACTION, IT BEING ONE OF A "CIVIL NATURE" WITHIN THE MEANING OF THE UNITED STATES JUDICIAL CODE (28 U. S. C. A. sec. 41).

This action is within the jurisdiction of the United States District Court in and for the State of Illinois because it is a suit "of a civil nature" within the Judicial Code (28 U. S. C. A., sec. 41) and the right to maintain it is established by the "Full Faith and Credit" clause of the Constitution (Art. IV, sec. 1, U. S. Const.).

We are told by the appellee corporation that the law prohibits one state of this Union, or a subdivision thereof, from entering a federal court of another state for the purpose of suing a corporation, which admittedly owes a judgment of more than $50,000.00 for taxes due the

plaintiff, because this is allegedly not a suit "of a civil nature."

Before any reference is made to authorities on the subject, it should appear that this argument is untenable on its face. The term "civil" in this statute obviously is meant to cover all causes not criminal. The judicial code in subsequent subsections, provides for the court's jurisdiction in the criminal field wherein the scope is limited to violations of criminal laws of the United States. No such limitations appear as to the civil field of the law.

A liability created by any rule of common law or statute other than by a strictly penal law, is clearly *civil*. In the case at bar, the demand upon the appellee is not, in any sense, penal. Appellant is not seeking to redress a wrong done the people of Wisconsin by violation of its criminal law. No claim is made that appellee has violated a criminal code, or is guilty of any act or omission against the peace and dignity or against the sovereignty of the State of Wisconsin for which the appellee merits punishment.[1]

Appellee argues further that, in order that a suit may be considered "of a civil nature," within the meaning of the United States Judicial Code (28 U. S. C. A., sec. 41), it must, in the case of this governmental plaintiff, involve a contractual or quasi-contractual demand. However, Federal District Courts dispose of thousands of "civil" controversies where the liability is not contractual. There is no just reason why controversies involving private litigants

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[1] In this respect, the case differs from the case of *Wisconsin v. Pelican Insurance Co.*, (1888) 127 U. S. 265, 32 L. Ed. 239, 8 S. Ct. 137, involving the original jurisdiction of the Supreme Court, which decision the appellee corporation urges is controlling as making against the jurisdiction of the United States District Court to entertain this action. That case was decided solely on a construction of Art. III, sec. 2, U. S. Constitution and the "full faith and credit" clause (Art. IV, sec. 1) was not involved.

may extend throughout the whole field of civil liabilities, whereas controversies involving municipalities as plaintiffs, which have been held to be "citizens" within the meaning of the jurisdictional laws, must be limited to the "contractual" field.

However, if this narrow interpretation of the word "civil" as applied to the case at bar is to be considered, a fair observation of the nature of an income tax liability shows it to be an obligation not only analogous to, but with a foundation more sacred than, any contractual liability. Appellee's liability to appellant for taxes based on income earned within the State of Wisconsin flows from appellee's choice in entering that state as an Illinois corporation, agreeing to comply with Wisconsin laws in order to obtain a license therein and in subsequently transacting its business therein out of which it reaped its profits. Appellee thus, by its own acts, became indebted to the appellant for its opportunity to earn profits within appellant county, wherein the protection and benefits of an orderly government were received. This debt became evidenced under Wisconsin law by the fairest possible measure of liability, to-wit: an income tax. The record, set forth in the certificate, pages 5 and 9, shows that appellee was given an opportunity to be heard with respect to the assessment of this income tax indebtedness, that it took this opportunity and appealed to the Wisconsin Tax Commission, that it had its second opportunity when sued in the Wisconsin court (Certificate pages 4-7) prior to the entry of the Wisconsin judgment on which this suit is predicated. Thus, the demand here asserted is, to a considerable extent, contractual in its nature.

Almost all judgments, on whatever cause of action they may be predicated, represent a contractual or quasi-contractual transaction. This conception is in accord with

the background of the Roman Law and the English common law, "as judgments have been for centuries employed in England as the most formal and conclusive type of record, whether of debt or grant." *Yntema, "The Enforcement of Foreign Judgments in Anglo-American Law,"* 33 Mich. Law Review (June 1935) at page 1147. The author of this quotation goes on to say (pages 1147-48):

> "It is this conception which by analogy has been adopted in England and the United States to form the basis of the recognition and enforcement of foreign judgment."

Thus actions available for enforcement of foreign judgments under the common law system of pleading are the actions of "debt" or "indebitatus assumpit." Under more modern systems of pleading, the derivatives of these forms of action are used.

> "Though the cause of action may have arisen from a tort, the judgment is not therefore any the less a contract or in the nature of a contract. The tort merges in the judgment. Hence it may be the foundation of an action of debt, or of a set-off, under a statute permitting actions *ex contractu* to be set off." 1 Freeman on Judgments (4th ed.) No. 217, p. 384.

A judgment predicated on a tax liability incurred within the United States should be considered on a higher plane than any other judgment. As the enforceability of all other civil judgments of sister states is regarded as within the jurisdiction of a United States District Court, it follows that the demand for enforcing a tax judgment of a sister state, as a suit upon a most sacred obligation, is entitled to cognizance.

II. THE AUTHORITIES SUSTAIN THE VIEW THAT THE TERM "CIVIL ACTION" IS A BROAD AND COMPREHENSIVE ONE AND THAT TAX DEMANDS (AND THEREFORE JUDGMENTS BASED THEREON) ARE WITHIN ITS SCOPE.

In *Florida Central & P. R. Co. v. Reynolds*, (1902) 183 U. S. 471, 475, 46 L. Ed. 283, 285, 22 S. Ct. 176, the United States Supreme Court pointed out:

> "* * * They [taxes] are obligations of the highest character, for only as they are discharged is the continued existence of government possible. They are not cancelled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative. Payment alone discharges the obligation, and until payment the State may proceed by all proper means to compel the performance of the obligation. No statutes of limitation run against the State, and it is a matter of discretion with it to determine how far into the past it will reach to compel performance of this obligation."

See also *State ex rel. Globe Steel Tube Co. v. Lyons*, (1924) 183 Wis. 107, 117, 197 N. W. 578.

In *Mariner v. Milwaukee*, (1911) 146 Wis. 605, 609, 139 N. W. 442, the Wisconsin Supreme Court said:

> "Taxes are debts due to the government which a property owner has no more right to withhold than the most sacred debt of a private nature. (Citing cases.)"

Authorities on the meaning of the term "civil action" hold that it is a broad and comprehensive term and generally that tax demands (and therefore judgments thereon) are within its scope.

In re Fox's Estate, (1910) 162 Mich. 531, 127 N. W. 668, (holding that a request by state authorities to the probate court for an order for the payment of an inheritance tax in excess of the amount chargeable against an estate or an appeal from the auditor general from an order of the probate court fixing the inheritance tax is a "civil proceeding" within Comp. Laws, sec. 11277, providing that the people in civil proceedings instituted being proper officers shall be liable for costs to the same extent as individuals instituting such proceedings);

Boston & Maine R. R. v. State, (1910) 75 N. H. 513, 77 Atl. 996, 31 L. R. A. (n.s.) 539, Ann. Cas. 1912A 382 (holding that a petition for abatement of taxes is a civil case within the meaning of a statute (Pub. Stat. 1901, Ch. 225, sec. 1) permitting the taking of depositions in such cases for the use of trial);

Wiscart v. D'Auchy, (1796) 3 U. S. (3 Dall. 321) 240, 1 L. Ed. 619 (discussing the term "civil causes" as used in the Judicial Act regulating the processes in the federal courts);

State ex rel. Kochtitzky v. Riley, et al., (1907) 203 Mo. 175, 101 S. W. 567, 12 L. R. A. (n.s.) 900 (holding that a proceeding to incorporate a drainage district and establish its boundaries is a civil suit within the meaning of those terms in a statute allowing a change of venue in such cases and holding that the word "civil" means relating to rights and remedies sought by action or suit, and that a civil remedy is the right of action given to a person injured as opposed to criminal prosecution;

In re Percival's Estate, (1917) 108 S. C. 39, 93 S. E. 243 (holding that Civ. Code 1912, sec. 3985, authorizing the taking of depositions *de bene esse* in "civil actions" applies to civil actions including special proceedings as dis-

tinguished from criminal actions and holding further that the taking of a deposition *de bene esse* in a proceeding involving escheat and coflictig claims of alleged heirs to itestate's estate was authorized).

See also Words & Phrases, Vol. 1 (2nd ser.) p. 708, *et seq.*; Words & Phrases, Vol. 1 (4th ser.) p. 412, *et seq.*; Words & Phrases, Vol. 2 (1st ser.) p. 1182, *et seq.*; and Words and Phrases, Vol. 2 (3rd ser.) p. 66, *et seq.* for other cases defining the term "civil action."

An action is "civil" rather than "penal" when the real object is not punishment, the fact that a government is plaintiff being immaterial.

Jernigan v. Commonwealth, (1905) 104 Va. 850, 52 S E. 361, 362;
Huntington v. Attrill, (1892) 146 U. S. 657, 673-675, 36 L. Ed. 1133, 13 S. Ct. 224.

In *Huntington v. Attrill*, (1892) 146 U. S. 657, 673-675, 36 L. Ed. 1133, 13 S. Ct. 224, the court in discussing whether a law is penal or civil, said:

"The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act * * *."

1 Corpus Juris, page 930, Note 22:

"'The term civil actions would, from its natural import, embrace every species of suits which is not of a criminal kind.' Curry v. Marvin, 2 Fla. 411, 417. * * *"

1 Corpus Juris, page 930, Section 8, Civil Action, at 931:

"* * * In a general sense the phrase 'civil actions' includes actions at law, suits in chancery, proceedings in admiralty, and all other judicial controversies in which rights of property are involved, whether between private parties, or such parties and the government * * *."

Note 26:

"The term 'civil action' is held 'to apply to actions in which the government is a party, as well as those between private persons.' Green v. U. S., 9 Wall. (U. S.) 655, 658, * * *."

In 1 Ruling Case Law, pages 325-326, sec. 11, it is said:

"Actions at law are classified under two heads, namely, civil actions and criminal actions; * * * A civil action is one brought to enforce a civil right, and a criminal action is one which has for its object the punishment of a crime. * * *."

See:

Ex parte Tom Tong, (1883) 108 U. S. 559, 2 S. Ct. 871, 27 L. Ed. 826.

Once a cause of action is reduced to judgment, it merges into a liability of a contractual nature, whether predicated upon tort, contract, common law, or statutory liability.

See Words & Phrases, Vol. 2 (2nd ser.) p. 1249 (citing *Hienl v. Terre Haute,* (1903) 66 N. E. 450, 161 Ind. 44, and additional citations.

It is well settled that a judgment for taxes is a debt and that if the State or a subdivision thereof obtains a

personal judgment for taxes, such judgment becomes a debt and an action on such judgment is a civil suit.

Words & Phrases, Vol. 2 (2nd ser.) p. 1874, citing *Rhodes v. O'Farrell*, (1886) 2 Nev. 60, 61.

III. UNDER THE ESTABLISHED LAW THE WISCONSIN JUDGMENT IS FREE FROM ATTACK EXCEPTING ON THE FOLLOWING GROUNDS: (1) LACK OF JURISDICTION IN THE ORIGINAL STATE COURT; (2) FRAUDULENT PROCUREMENT, OR, (3) PAYMENT; AND THE MERITS OR VALIDITY OF THE CLAIM UPON WHICH THE JUDGMENT IS FOUNDED CANNOT BE EXAMINED.

The theory that judgments of the courts of one state become debts of the highest character in all the courts of the United States is a well established part of our constitutional law. The right of the appellant to sue herein is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit." Any judgment of a sister state, being entitled to full faith and credit under the constitutional requirement, is alleged and pleaded, as in the case at bar, as the basis of an action in debt or implied contract. This constitutional provision strengthens appellant's plea for its right to file this suit.

It is said that in the proceedings in the Federal Convention, Madison suggested that "the Legislature might be authorized to provide for the *execution* of judgments of other states . . . ."[1] With this in mind, broad constitutional powers were created and Congress in 1790 enacted that the same faith and credit should be given in all courts

[1] 33 Mich. Law Review (June 1935) page 1149. Yntema "The Enforcement of Foreign Judgments in Anglo-American Law.

of the United States to duly authenticated records "as they have by law or usage in the courts of the state from whence the said records are or shall be taken." While this has never been construed to allow execution without suit, the courts in a long line of decisions[1] have affirmed and reaffirmed the rules (a) that judgments of sister states are free from attack excepting on these grounds, to-wit: (1) lack of jurisdiction in the original state court, (2) fraudulent procurement, or (3) payment, and (b) that the merits or validity of the claim upon which the judgment is founded cannot be examined. Nothing in the constitution or any of the statutes relating directly or indirectly to the jurisdiction of the United States courts makes an exception wih reference to judgments predicated upon tax demands.

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[1] *Mutual Life Ins. Co. v. Harris*, (1877) 97 U. S. 331, 335, 24 L. Ed. 959;
Converse v. Stewart, (1911) 192 Fed. 941 (aff. 197 Fed. 152, 118 C. C. A. 212);
Christmas v. Russell, (U. S. 1866) 5 Wall. 290, 302, 18 L. Ed. 475;
Thompson v. Whitman, (U. S. 1873) 18 Wall. 457, 461, 21 L. Ed. 897;
Knowles v. Longsport Gas, Light & Coke Co., (U. S. 1873) 19 Wall. 58, 60, 22 L. Ed. 70;
Hanley v. Donaghue, (1885) 116 U. S. 1, 29 L. Ed. 535, 6 S. Ct. 242;
Renaud v. Abbott, (1886) 116 U. S. 277, 287, 29 L. Ed. 629, 6 S. Ct. 1194;
Huntington v. Attrill, (1892) 146 U. S. 657, 666, 36 L. Ed. 1123, 13 S. Ct. 224;
Fauntleroy v. Lum, (1908) 210 U. S. 230, 236, 52 L. Ed. 1039, 28 S. Ct. 641;
Kennedy v. Supreme Lodge, (1920) 252 U. S. 411, 415, 64 L. Ed. 638, 40 S. Ct. 371;
Roche v. McDonald, (1928) 275 U. S. 449, 451-452, 72 L. Ed. 365, 48 S. Ct. 142.

IV. THE JUDGMENT HEREIN IS ENTITLED TO BE ENFORCED UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION (ART. IV, SEC. 1), BECAUSE SUCH JUDGMENT WAS RENDERED BY A COURT OF RECORD OF GENERAL JURISDICTIONAL POWERS WITH FULL JURISDICTION OVER BOTH THE PARTIES AND THE SUBJECT MATTER AND BECAUSE TAX JUDGMENTS DO NOT FALL WITHIN THE CLASS OF PENAL CLAIMS.

But appellee asserts that tax judgments fall within the class of "penal" claims and are therefore barred. It has already been pointed out that the judicial code makes especial provision for cases within the "penal" field and that therefore the failure to limit the scope of jurisdiction in the civil field indicates that there is no implied bar to jurisdiction of the instant case. It is conceded, however, that there are a few decisions which may seem to support appellee's argument to the effect that tax claims fall within the same class as "penal" suits. Most of these can be distinguished. They will be discussed later.

The issue, however, so far as we can find, is before this court as an original proposition. Appellant urges that a classification of tax judgment cases within the same class as penal claims such as the one involved in *Wisconsin v. Pelican Insurance Co.*, (1888) 127 U. S. 265, 32 L. Ed. 239, 8 S. Ct. 127 will be a most backward step and a most unfortunate precedent to establish in these United States, in the face of the broad provisions of the "Full Faith & Credit" clause.

This court very recently considered the scope of the "Full Faith and Credit" clause in the case of *Broderick*

v. Rosner, 79 L. Ed. (Adv. Ops.) 619, 55 Sup. Ct. Rep. 589. It was held that one state cannot "deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the parties." The liability of bank stockholders under New York law was held assertable in a New Jersey court by suit in the name of the New York Banking Commissioner upon the assessment as determined under New York law, despite New Jersey legislation which attempted to restrict the jurisdiction of its courts over that subject matter. If the "Full Faith" clause is thus supreme over state courts, it follows that this clause, being applicable to United States courts as well, must control the action at bar, regardless of appellee's interpretation of the Judicial Code. Appellee's interpretation of the Judicial Code is at variance with the Constitution. Mr. Justice Brandeis, in the opinion in the *Broderick* case, refers to the "constitutional obligations" under the full faith and credit clause. It is submitted that these obligations extend to the federal court in the case at bar, in the same high degree as they were held to extend to the state court in the cited case.

Appellee quotes some writers on Conflict of Laws who apparently believe so strongly in the principle of territorial independence of jurisdictions, that they are willing to deny any unity in the federal system of justice. Rules followed in ancient times as governing relations between sovereign nations, seem to be carried by these writers into the discussion of relations between courts of different states of this Union without limitation and without a fair consideration of the "Full Faith" constitutional rule. If this conception be logically followed out, it might be thought that every city, town and parish in the United States may be a legal unit for the purposes of dealing with

all questions of jurisdiction as, in some degree, each such unit may have, and some do have, in fact, separate law. Such writers lose sight of the importance of the wide scope of the faith and credit provision and of the fact that the states of this Union must now, more than ever, be considered in a light diffrent from separate, independent nations.

It is therefore submitted that appellee's argument urging that the case at bar be classed among penal suits in which the courts in one state ordinarily do not assist another is not only opposed to the letter of the judicial code but to the letter and spirit of the constitution as well. It is hardly necessary to add that, in modern times, in this Union of States, we are confronted with the ease of quick transportation of persons and intangible as well as tangible wealth. Never has it been more important to the existence of a state that its revenue laws should be given recognition at least to the extent prayed for in this case.

Penal laws today are taken care of in this respect through extradition and Federal legislation against the so-called interstate criminal.

The interstate tax-evader is a menace to good government. He should be curtailed, and the means of curtailment is here presented by appellant to the Federal courts, through a reasonable and fair interpretation of the Judicial Code and of Article IV, Section 1, of the Constitution.

Attention is called to the generally broad construction of the meaning of "Full Faith and Credit." Even suits involving certain penal judgments have been allowed under this construction.

In *Spencer v. Brockway*, (1824) 1 Ohio 122, the state treasurer of Connecticut brought suit in the courts of that state upon two forfeited recognizances which were given by

the defendant for a violation of the penal laws of Connecticut. Judgment was entered for the plaintiff and the latter instituted suit thereon in Ohio. The defendant contended that the plaintiff could not sue on the Connecticut judgment in the courts of Ohio since "the courts of one state will not enforce the penal laws of another." The Supreme Court of Ohio nevertheless affirmed a judgment for the plaintiff, and stated (at pp. 123-124):

> "We do not discover any reason why the state of Connecticut should be prohibited from prosecuting her just claims, in the courts of this state. There is not anything in the constitution, or laws of Ohio, that requires such a prohibition, nor do we believe that it is necessary, or that it would be expedient; * * *.
>
> "The suit is for the recovery of a sum of money. *It is founded on judgments obtained in the Supreme Court of the state of Connecticut, and not on the penal laws of that state.* * * *
>
> "* * * This court has often decided, that judgments regularly obtained in other states, against defendants who have been served with process, or had otherwise appeared, and had an opportunity of making a defense, are to be received as conclusive evidence, and that no re-examination of the grounds on which they are rendered can be permitted. We believe this to be the true construction of that section in the Constitution of the United States, which requires that 'full faith and credit shall be given in each state, to the public acts, records, and judicial proceedings of every other state,' and of the act of Congress, in pursuance thereof, which requires that they shall have such faith and credit given to them, in every court within the United States, as they have by law or usage, in the courts of the states, from whence the said records are, or shall be taken.' The faith and credit here spoken of, requires us to admit, * * * that the money awarded to the plaintiff, is legally due, and that he has a right

to recover it, without a reinvestigation of his claim. Such is the effect of the faith and credit given to it in the state from whence it came, and such must be its effect here, * * *."

In *Healy v. Root*, (Mass. 1831) 11 Pick. 389, the plaintiff procured a judgment in Pennsylvania in a *qui tam* action under a penal statute for usury, and sued on the judgment in Massachusetts. The defendant set up that the original cause of action was for a penalty, wherein the Commonwealth of Pennsylvania was interested, and that since it could not have been sued and enforced in Massachusetts, a judgment rendered thereon should also not be enforced. Justice Putnam said (at page 390):

"* * * we cannot perceive the force of the argument. If the cause of action were local, as trespass *quare clausum fregit*, for example, it could not have been sued here; *but after the plaintiff had by a verdict and judgment reduced his damages to a certainty, the original cause of action would be merged in the judgment.*

"* * *

"In regard to the suggestion, that this would be executing the criminal code of Pennsylvania in this state, we remark that in much more important matters one state will aid another in that behalf. It will, upon proper application, arrest fugitives from justice, and put them in the power of the state whose laws have been violated, to be tried and punished on conviction. If we were to look into the cause of action, there would seem to be no reason why this Court should interfere in preventing a recovery. * * *." (Italics ours.)

The court accordingly held that the judgment was entitled to full faith and credit.

In *State of Indiana ex rel. Stone v. Helmer*, (1886) 21

Iowa 370, the plaintiff recovered a judgment in Indiana in bastardy proceedings and brought suit upon it in Iowa. The defendant contended that the original cause of action was one based upon local police regulation, which could not be enforced in another state. The court admitted that the original claim for the support of the child under the statute of Indiana could not have been enforced in Iowa since it was a penal claim and a matter of local and internal police regulation, but the court went on (at page 372):

> "But where the local jurisdiction has attached, and the courts of that State or sovereignty have properly taken cognizance of the matter, and rendered judgment for such penalty, such judgment is entitled to 'full faith and credit' in every other State. If the court rendering the judgment had jurisdiction of the subject matter and the parties, it is sufficient to entitle the plaintiff therein to maintain an action thereon in another State. And the courts of such other State will not inquire into the facts upon which it was based, nor whether the cause of action would have been enforced by them. * * *."

In *Schuler v. Schuler*, (1904) 209 Ill. 522, 71 N. E. 16, the plaintiff brought an action of desertion against her husband in Pennsylvania and secured a judgment ordering the defendant to pay five dollars a week for support. Several years later the plaintiff sued the defendant on her judgment in Illinois in an action of debt. The defendant contended that the proceedings in Pennsylvaia were of a criminal or penal character and therefore that the judgment was not actionable in Illinois. The Supreme Court of Illinois nevertheless held that the Pennsylvania judgment would be recognized. Justice Boggs said (209 Ill. p. 526):

> "The provision of the constitution of the United States which requires that full faith and credit shall

be given in each State to the public acts, records and judicial proceedings of every other State, does not require a State to enforce the penal laws or the local police regulations of another State. *But where a court of a sister State, having jurisdiction of the persons and of the subject matter, has taken cognizance and rendered judgment in a sum of money for the penalty prescribed or amount provided for under such a statute, the judgment so rendered is entitled to full faith and credit in every other State.* * * *." (Italics ours.)

In *Interstate Savings & Trust Co. v. Wyatt*, (1917) 63 Colo. 1, 304, 164 Pac. 506, the plaintiff brought suit in Texas under a statute of that state giving to a person who pays more than the legal rate of interest the right to recover double the amount of interest paid. The plaintiff recovered a judgment and sued upon it in Colorado. The defendant set up that the judgment was not entitled to full faith and credit because it was penal in character. The court held that full faith and credit should be extended to the judgment, since the claim sued upon although penal in a sense, was remedial to a certain extent and therefore not penal in the international meaning.

In *Jordan v. Muse*, (1909) 88 Ark. 587, 589, 115 S. W. 162, suit was brought in Arkansas upon a decree rendered by the Court of Chancery of Tennessee. The defendant set up that the judgment was based upon a violation of his public duty as a public officer of Tennessee. The court held that the original cause of action was merged in the Tennessee decree and that the mandate of the constitution required that full faith and credit be given to such decree.

V. THE RECENT DECISION OF *PEOPLE V. COE MANUFACTURING COMPANY* SUPPORTS APPELLANT'S POSITION AS TO THE ENFORCEABILITY OF THE JUDGMENT HEREIN WITHIN THE STATE OF ILLINOIS.

The most recent state court decision on the issue supports appellant's position as to the enforceability of this tax judgment within the State of Illinois.

In *People v. Coe Manufacturing Company*, (1934) (Supreme Court of New Jersey 1932) 10 N. J. Misc. 1161, 162 Atl. 872, affirmed in 172 Atl. 198 (1934), the court held that the state of New York might bring an action in a New Jersey court on a New York judgment obtained for taxes imposed by a New York statute. Judge Caffrey pointed out (162 Atl. 872, 873):

> "Of course, if this were an original suit for the collection of taxes due to the state of New York, the plaintiff would be without relief, because the principle is well settled, without the need of citation, that the courts of one state will not enforce a claim for taxes as such in any other jurisdiction than that in which the taxes are due. Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357.
>
> "*As I view this matter, the suit in this court is not for the collection of taxes, but for the collection of a judgment which is based on a tax claim, and the original character of the claim has been merged in the judgment.* In so holding I am not unmindful of Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 L. Ed. 1123, nor Wisconsin v. Pelican Insurance Company, 127 U. S. 265, 8 S. Ct. 1370, 32 L. Ed. 239." (Italics ours.)

The New Jersey Court of Errors and Appeals, being the highest court of that state, on an appeal of the above *Coe* case affirmed the same on April 12, 1934 (172 Atl. 198,

199-200), and we quote in part from the opinion of Judge Lloyd, who delivered the opinion of that Court:

> "The right of the state of New York to exclude corporations of other states cannot be open to question, and its right to admit such corporations for the transaction of business within its borders upon such terms as it deems wise is likewise not open to question. When, therefore, as a privilege of transacting its business therein the state exacted for that privilege a franchise tax or sum of money proportioned to the earning power of the corporation it was wholly within its rights. Bass, Ratcliff & Gretton v. State Tax Commission, 266 U. S. 271, * * * It was then optional with the corporation to avail itself of the privilege accorded or to refrain from doing so. When it did avail itself of the opportunity thus afforded it did so under the implied obligation that it would comply with the conditions upon which it was permitted to enter.
>
> "Its own action carried with it, under the interpretation as given to the statute by the courts of that state (binding here) the obligation to personally see that the license fees or franchise taxes were paid. It could not accept the benefits without incurring the burdens. It is true the statute imposed certain penalties for failure to comply with the obligation thus assumed, but these were nothing more than the obligation frequently imposed in ordinary contracts between individuals and became as it were liquidated damages for the breach.
>
> "The state of New York, having in its own court recovered judgment against the appellant (the appellant having been personally served and present therein), jurisdiction of the person was obtained. When it was there determined that the statute imposed a personal liability upon the corporation, it was the construction by the court of that state of its own laws. Having been so determined, the appellant was concluded on those two phases of the litigation and could not thereafter deny jurisdiction either of the

subject matter or of the person; nor could it assert another interpretation of the act.

"Our added view is that even though the door to contend that the statute creates penalties which may not be enforced outside the state of New York be open to the appellant in this state (which may be debatable), the action was not to collect such penalty, but to collect a debt which the appellant had impliedly agreed to pay.

"If such claims as are here presented were not enforcible against foreign corporations wherever found, the states of the Union would be subject to grave wrongs from without, inasmuch as corporations establish important connections in states other than those of their incorporation, and transact large business therein without the investment of a dollar or the placing of tangible property within their borders whereby redress may be had against corporations in default."

The appellee's interpretation of the case of *People v. Coe Mfg. Co.* is this: that because the tax therein sought to be collected by New York was, in effect, a "service charge" made against the Coe Co. in return for said company's New York foreign corporation license, it was in the nature of "contractual" liability and therefore dissimilar to an assessment made without any element of consent. Appellee asserts that, whereas this alleged distinction takes the *Coe* case out of any classification with "penal" judgments based on claims or fines imposed without any assent of the debtor, the case at bar represents an original debt imposed without any element of assent and hence belongs in the same classification as "penal" claims of foreign jurisdictions. Appellee supports its argument on this point by reference to the American Law Institute's "Restatement of the Law of Conflict of Laws" (1934), Section 443, Subsection d, wherein the following illustration appears:

"A, a foreign corporation, applies for permission to do local business in state X. Permission is granted to X on terms, among others that a stipulated fee be paid by A. A fails to pay the fee. X can sue A in state Y upon the judgment and may recover thereon."

Appellant submits that this interpretation of the law of the *Coe* case is entirely too narrow. Of course, it was unnecessary for the New Jersey court to go further than adopt this interpretation for the purpose of giving the State of New York the relief it desired.

In the *Coe* case, supra, the New Jersey corporation is said to have made a contract with the State of New York when it applied for its franchise to transact business. If this is to be called a contract, we submit that all taxes, franchise or otherwise, against a foreign corporation, should go into the same classification. Unquestionably New York could have increased its franchise charges at any time and the Coe Company would be obligated to pay them as certainly as it obligated itself to pay the original fee.

In the instant case, the White Company entered Wisconsin and upon obtaining its franchise, pledged itself to obey Wisconsin law and to pay the Wisconsin income tax as a condition for the privilege of transacting business within the state. We submit that there is no distinction whatever between the reasoning relied on by the New Jersey court in the *Coe* case and the appellant's case here presented.

VI. MOST TEXTWRITERS AND AUTHORITIES ARE IN ACCORD WITH THE VIEW THAT JUDGMENTS BASED UPON TAX CLAIMS ARE ENTITLED TO FULL FAITH AND CREDIT IN THE COURTS OF SISTER STATES.

Comments by law-writers appear to sustain our views. 44 Harvard L. Rev., 1265 (1931); 29 Columbia L. Rev. 782 (1929). Vol. 12, No. 1, New York Law Review, page 137. In 46 Harvard L. Rev. 193, at page 215, the comment is:

> "* * * A corporate franchise tax may be owed by a corporation all of whose property is located and business conducted in states other than that in which it is incorporated. * * * Unless a state is permitted to maintain actions in other states for tax collection purposes, complete escape from tax liabilities will often be accomplished. * * *."

The following is a comment on the *Coe* case appearing in 42 Yale L. J. 1131-1132-1133 (1933):

> "Historically, the refusal to enforce foreign tax claims is explained on the theory that the English courts considered such enforcement injurious to local commerce. More recently it has been suggested that a state should not enforce a foreign tax suit because of the additional burden thereby placed upon its courts and the difficulties attendant upon the assessment of a tax in conformity with complex foreign revenue statutes. In addition, the very nature of the tax might be inconsistent with established local policy. *But it may be questioned whether these arguments are applicable to the situation in the principal case,* [*People of the State of New York v. Coe Mfg. Co.*, in the New Jersey Supreme Court] *where the tax claim was reduced to judgment in the foreign state, since the local court would have to consider only matters of jurisdiction or defenses which might be raised on collateral attack in the taxing state.*

"• • •

"The historical ground for denying enforcement of foreign tax claims has, of course, disappeared as between the several states. Moreover, the present concentration of wealth in the form of intangibles easily transported across state lines has rendered more difficult the problem of enforcement. These considerations, in addition to the immediate and pressing need of the states for revenue, might well outweigh the traditional opposition to extraterritorial enforcement of tax claims. *Clearly at least, the constitutional mandate of full faith and credit affords ample support for the enforcement by a local court of such claim when it has been first reduced to judgment in the taxing state.*" (Italics ours.)

See also 18 Cornell L. Q. 581 (1933).

We submit that no tax judgment obtained in a sister state, whether its foundation be of the nature described in the "Restatement" or otherwise, should be classed with "penal" judgments and arbitrarily withheld from the jurisdiction of a United States District Court. A fear or hesitancy to permit one state or a county thereof to further its governmental interests in the pursuit of a tax-evader who has removed himself and his property to another state is unwarranted. Individuals are permitted by Federal law to sue upon any civil cause of action where other jurisdictional facts appear. Why should there be a discrimination against an out-of-state governmental unit with foreign nations? It is submitted that neither the formulators of the constitution nor of the judicial code can be said to have intended such an unreasonable discrimination.

Federal courts in private cases interpret and enforce the laws of sister states. In fact, many controversies in-

volve the interpretation of various state revenue acts. Individuals are permitted to sue state and municipal agencies in Federal courts in matters involving state revenue laws and assessments.

Palmolive Company v. Conway, et al., (1932) 56 Fed. (2d) 83;
Buick Motor Co. v. Milwaukee County, et al., (1939) 43 Fed. (2d) 385.

If it is a "suit of a civil nature" when the alleged tax debtor is plaintiff, why is it not a civil action when he is the defendant? The individual asks relief against a state agency generally to protect his rights under the Federal Constitution. In the case at bar the appellant as a state agency asks to protect and promote its rights under the Federal Constitution's "Full Faith and Credit" clause.

Although Prof. J. H. Beale, in his very recent text on Conflict of Laws, Vol. 2, page 1410, cites the trial court's decision in the instant case, and in Vol. 3 at page 1567, *In re Martin's Will*, 255 N. Y. 359, 174 N. E. 753, wherein it was held that it is not an abuse of discretion under certain circumstances for the Surrogate to refuse to transmit estate assets to a sister state (deceased's domicile) to pay an inheritance tax, his comment on the latter is:

> "This is a most unfortunate, as well as unneighborly decision, and it is hoped it will not be followed."

At page 1638, Vol. 3, Conflict of Laws, Prof. Beale, after having reviewed the *Harbeck* and other cases, says:

> "* * * the question (i.e. enforcement of the revenue laws of a sister state) is *still open in federal courts and in almost all, if not all, of the state courts* * * *"

Attention is called to the British case of *Foster v. Driscoll*, (1929) 1 K. B. 470, wherein a British contract was denied recognition because its execution involved violation of the United States Liquor Prohibition Laws. This recognition of a United States penal law by a foreign sovereignty is commendable. We believe recognition by Federal courts of the revenue laws of sister states of this Union should be held as not only commendable but required by our constitutional law and judicial code.

CONCLUSION

Much of the above argument extends to the proposition that we should be allowed the use of Federal courts outside of Wisconsin to bring actions upon tax liabilities which have not been reduced to judgment. To this proposition many cases such as those cited in the District Judge's decision (Certificate p. 14) appear to be opposed. Those cases are distinguishable from the instant one upon the ground that they involved original actions and not an action based upon a valid judgment. Those cases seem to follow the ancient, obsolete doctrine of international law that one government will not assist another in the enforcement of its revenue laws, without any consideration of the fact that United States is all one country and the rules applicable to international relations ought not apply. We submit that the harsh rule of *Colorado v. Harbeck*, (1921) 133 N. E. 357, 232 N. Y. 71 (which decision, in any event, is not applicable to the facts in the instant case), ought not apply in modern times and the Federal courts ought to be the first to recognize the need for nation-wide cooperation in the enforcement of the revenue laws of all states, which laws are the foundations of their existence.

If this court hesitates to open the door of Federal courts to state revenue claims not predicated on judgments, at least it ought not hesitate to recognize judgments based upon such claims and permit the prosecution of suits thereon in cases such as the case at bar.

For the above reasons and upon the above authorities, it is respectfully submitted that the question certified should be answered in the affirmative.

WM. A. ZABEL,
District Attorney,
Milwaukee County, Wisconsin;

O. L. O'BOYLE,
Corporation Counsel,
Milwaukee County, Wisconsin;

CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Milwaukee County, Wisconsin;
Attorneys for Milwaukee County.

JAMES E. FINNEGAN,
Attorney General,
State of Wisconsin;

HERBERT H. NAUJOKS,
Assistant Attorney General,
State of Wisconsin;

JAMES G. CULBERTSON,
of Chicago, Illinois,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 32.

MILWAUKEE COUNTY,

vs.

M. E. WHITE COMPANY.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLEE, M. E. WHITE COMPANY.

IRVING HERRIOTT,
Chicago, Illinois,
Attorney for M. E. White Company, Appellee.

W. WARD SMITH,
Chicago, Illinois,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO

INDEX AND SYNOPSIS.

	PAGE
CASES CITED	V
CONSTITUTIONAL AND STATUTORY PROVISIONS CITED	VI
TEXTS AND LEGAL PERIODICALS CITED	VI
PRELIMINARY STATEMENT	1
QUESTION CERTIFIED	1
STATEMENT OF FACTS	2
PROPOSITIONS OF LAW	2
I. The District Court of the United States is without jurisdiction to entertain an action for the extrastate enforcement of the revenue laws of one of the States of the United States	2
II. Article IV, Section 1, of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687) do not compel the courts within the United States to entertain jurisdiction of an action for the extrastate enforcement, either directly or indirectly, of the revenue laws of one of the States of the United States	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4-33
I. The District Court of the United States is without jurisdiction to entertain an action for the extrastate enforcement of the revenue laws of one of the States of the United States	4-28
A. A general grant of judicial power confers on a court no power or authority to entertain jurisdiction of an action to enforce, either directly or indirectly, the revenue laws of another State	4
1. The authority conferred by a general grant of judicial power is limited to	

PAGE

those controversies which, under the settled rules of public and international law, are proper subjects of judicial cognizance. 4

2. An action to enforce, either directly or indirectly, the revenue laws of another State presents no controversy which, under the settled rules of public and international law, is a proper subject of judicial cognizance. 6

B. An action to enforce, either directly or indirectly, a penal law for the protection of the revenue, or the revenue law, of a foreign State is not an action "of a civil nature" within the meaning of Section 24 of the Judicial Code of the United States (28 U. S. C. A. Sec. 41). 22

1. An action to enforce, either directly or indirectly, a penal law for the protection of the revenue of a foreign State is not an action "of a civil nature." 24

2. An action to enforce, either directly or indirectly, a revenue law of a foreign State is not an action "of a civil nature." 27

II. Article IV, Sec. 1, of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687), do not compel the courts within the United States to entertain jurisdiction of an action for the extra-state enforcement, either directly or indirectly, of the revenue laws of one of the States of the United States. 28-33

A. The framers of the Constitution of the United States did not, by Article IV, Sec. 1, of that Constitution, intend to increase

PAGE

or extend the jurisdiction of the courts of the several States of the United States. 29

B. Article IV, Section 1, of the Constitution, and the Act of ~~May~~ 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687) have, by this Court, been interpreted as not increasing or extending the jurisdiction of the courts within the United States. 30

C. "Full faith and credit" under Article IV, Section 1 of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687) does not compel courts to assume jurisdiction of action concerning which they are otherwise incompetent. 31

CONCLUSION 34

CASES CITED.

Ames, et al. v. Kansas, and Kansas Pacific Ry. Co. v. Kansas (1883), 111 U. S. 449, 28 L. ed. 482, 4 S. Ct. 437 24

Anglo American Provision Co. v. Davis Provision Co. (1903), 191 U. S. 373, 374; 48 L. ed. 225, 227, 24 S. Ct. 92 ..... 30, 31

Arkansas v. Bowen (1894), 3 App. Cases D. C. 537, Aff'g 20 D. C. Reps. 291 ..... 7, 8, 26

Antelope, The, 10 Wheat. 66, 123, 6 L. ed. 268, 282 10

Ballard v. Hunter (1906), 204 U. S. 241, 255-258, 51 L. ed. 461, 472, 27 S. Ct. 261 14

Bristol v. Washington County (1899), 177 U. S. 133, 145; 44 L. ed. 701, 707, 20 S. Ct. 585 16

Broderick v. Rosner (1934), 79 L. ed. Adv. Op. 619, 623 32

Cheatham v. Norvekl (1875), 92 U. S. 85, 88-89, 23 L. ed. 561, 563 14

PAGE

Cherokee Nation v. Georgia (1831), 5 Pet. 1, 75, 8 L. ed. 25, 75 ..... 6, 9

Coe v. Errol (1885), 116 U. S. 517, 524, 29 L. ed. 715, 718, 6 S. Ct. 475 15

Colorado, State of v. Harbeck (1921), 232 N. Y. 71, 133 N. E. 357 7

Davidson v. New Orleans (1877), 96 U. S. 97, 24 L. ed. 616 15

Finney v. Guy (1902), 189 U. S. 335, 346, 47 L. ed. 839, 845, 23 S. Ct. 558 22

Georgia v. Stanton (1867), 6 Wall. 50, 77; 18 L. ed. 721, 725 ..... 6, 9

Hans v. State of Louisiana (1889), 134 U. S. 1, 16, 33 L. ed. 842, 847, 10 S. Ct. 504 4

Healy v. Ratta (1934), 292 U. S. 263, 271, 78 L. ed. 1248, 54 S. Ct. 700, 703 22

Heine v. The Board of Levee Commissioners (1873), 19 Wall. 655, 661, 22 L. ed. 223, 226 14

Henry v. Sargent (1843), 13 N. H. 321 (41), 332 7

Holman v. Johnson (1775), 1 Cowp. 341, 343, 98 Eng. Reps. (Full Reprint) 1120, 1121 10

Huntington v. Attrill (1892), 146 U. S. 657, 36 L. ed. 1123; 13 S. Ct. 224 ..... 6, 8, 20, 30

Huntington v. Attrill (1893), A. C. 150 (Eng.) 6, 8, 31

Kelly v. Pittsburgh (1881), 104 U. S. 78, 26 L. ed. 658 .. 14

Kentucky v. Dennison (1860), 24 How. 66, 108-109, 16 L. ed. 717, 729-730 ..... 6, 7, 9

Lane County v. Oregon (1868), 7 Wall. 71, 77, 19 L. ed 101, 105 13

Martin, Estate of (1930), 240 N. Y. Sup. 393 7

Maryland, State of v. Turner (1911), 132 N. Y. Sup. 173 7

Mathews v. Rogers (1931), 284 U. S. 521, 525, 76 L. ed. 447, 452, 52 S. Ct. 217 22

McCulloch v. Maryland (1819), 4 Wheat. 316, 428-431, 4 L. ed. 579, 607 13

PAGE

McKnett v. St. Louis & S. F. Ry. Co. (1933), 292 U. S. 230, 233, 78 L. ed. 1227, 1229, 54 S. Ct. 690 32

Meriwether v. Garrett (1880), 102 U. S. 472, 513; 26 L. ed. 196, 205 15

Moore v. Mitchell (C. C. A. 2d 1929), 30 Fed. 2d 600, 65 A. L. R. 1352, Aff'd 1929, 281 U. S. 18, 74 L. ed. 674, 50 S. Ct. 175 ..... 7, 10

Municipal Council of Sidney v. Bull (Eng. 1909), 1. K. B. 7 7

New Hampshire v. Louisiana (1882) and New York v. Louisiana (1882), 108 U. S. 76, 27 L. ed. 656; 2 S. Ct. 176 9

New York Trust Co. v. Island Oil & Transport Corp. (1926), 11 Fed. 2d 698 7

Oklahoma v. Gulf Col. & Santa Fe Ry. Co. (1910), 220 U. S. 290, 55 L. ed. 469, 31 S. Ct. 437 6

People v. Callopy (1934), 358 Ill. 11, 14, 192 N. E. 634, 635, 636 5

People v. Coe Mfg. Co. (1932), 10 N. J. Misc. 1161, 162 Atl. 872, Aff'd (1934), 172 Atl. 198 20

Springer v. United States (1880), 102 U. S. 586, 594, 26 L. ed. 253, 256 14

State of Indiana v. Allegheny Oil Co., et al. (1898), 85 Fed. 870 24

Visser, In re v. Drukker (Eng., 1929), 1 Ch. 877 7

Wisconsin v. Pelican Insurance Co. (1887), 127 U. S. 265, 268, 32 L. ed. 239, 243, 8 S. Ct. 1370 ..... 5, 6, 8, 20, 23, 24, 25, 26, 31

CONSTITUTIONAL AND STATUTORY PROVISIONS.

Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687) 28, 32

Constitution of the United States, Article IV, Sec. 1 .. 28, 32

Judicial Code of the United States, Sec. 24 (28 U. S. C. A. Sec. 41) 22

TEXTS AND LEGAL PERIODICALS CITED.

PAGE

American Law Institute (1934), Restatement of the Law of Conflict of Laws.....7, 8, 20, 23, 33

Beale (1935), The Conflict of Laws.....7, 8, 11

Dicey's Conflict of Laws, 5th ed. 6, 7, 8, 11, 12, 23

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Harvard Law Review; Note, 48:828..... 18

Harvard Law Review; 46:193..... 21

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Story's Conflict of Laws (1834).....7, 8

Story's Commentaries of the Constitution of the United States (1833)..... 29

Warren, Charles, Federal and State Interference, 43 Harvard Law Review 346..... 22

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 32.

MILWAUKEE COUNTY,

vs.

M. E. WHITE COMPANY.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLEE, M. E. WHITE COMPANY.

Preliminary Statement.

This case comes on for hearing in this court on a certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

Question Certified.

The question certified to this court by the United States Circuit Court of Appeals for the Seventh Circuit is:

Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, enter-

tain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin? (Certif. 2.)

Statement of Facts.

The relevant facts in this controversy as stated by the United States Circuit Court of Appeals for the Seventh Circuit (Certif., 1-2) is sufficiently accurate and comprehensive except, appellee respectfully submits to this court, in one particular; namely, the statement omits all reference to the fact that from the face of the judgment upon which this action is brought it appears that there is included a penalty (Certif., 10) and that this penalty is imposed by the State of Wisconsin in addition to interest for a violation of its revenue laws (Certif., 9).

Propositions of Law.

The question certified to this court by the United States Circuit Court of Appeals for the Seventh Circuit should be answered in the negative because:

I. The District Court of the United States is without jurisdiction to entertain an action for the extrastate enforcement of the revenue laws of one of the States of the United States.

II. Article IV, Section 1, of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687) do not compel the courts within the United States to entertain jurisdiction of an action for the

extrastate enforcement, either directly or indirectly, of the revenue laws of one of the States of the United States.

Summary of Argument.

The enforcement of the revenue laws of another State, like foreign political and penal laws, is not properly cognizable by or within the power of the judiciary of the United States or any State of the United States, unless and until and only to the extent that such power is specifically granted to the judiciary by the respective sovereignties. Moreover, an action to enforce the revenue claims, whether in judgment or not, of a State of the United States, is not an action of a "civil nature" and hence not within the jurisdiction of District Courts of the United States, particularly where penalties for violation of the revenue laws are a part of the recovery sought. And, finally, the mandatory force of the "full faith and credit" clause of the Constitution of the United States is inoperative where, as in the extrastate enforcement of revenue claims, the competency of courts and not the comity to be extended to foreign created rights is primarily in question.

ARGUMENT.

I.

The District Court of the United States is without jurisdiction to entertain an action for the extrastate enforcement of the revenue laws of one of the States of the United States.

A. A general grant of judicial power confers on a court no power or authority to entertain jurisdiction of an action to enforce, either directly or indirectly, the revenue laws of another State.

1. The authority conferred by a general grant of judicial power is limited to those controversies which, under the settled rules of public and international law, are proper subjects of judicial cognizance.

Article III of Section 1 of the Constitution of the United States vests "the judicial power of the United States * * * in one supreme Court, and such inferior Courts as the Congress may from time to time ordain and establish."

In discussing the extent of the judicial powers so granted and the principles applicable in determining that extent, Mr. Justice Bradley, in *Hans* v. *State of Louisiana* (1889), 134 U. S. 1, 16, 33 L. ed. 842, 847, 10 S. Ct. 504, says:

> "The truth is, that the cognizance of suits and actions unknown to the law, and forbidden by the law, was not contemplated by the Constitution when establishing the judicial power of the United States. Some things, undoubtedly, were made justiciable which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution. * * * The establishment of this new branch

> of jurisdiction seems to be necessary from the extinguishment of diplomatic relations between the States. *Of other controversies between a State and another State or its citizens, which, on the settled principles of public law, are not subjects of judicial cognizance, this court has often declined to take jurisdiction.*" (Italics ours.)

More concisely, but to the same effect, Mr. Justice Gray, in *Wisconsin* v. *Pelican Insurance Co.* (1887), 127 U. S. 265, 268, 32 L. ed. 239, 243, 8 S. Ct. 1370, said:

> "The grant is of 'judicial power,' and was not intended to confer upon the Courts of the United States jurisdiction of a suit, or prosecution by the one State of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other State at all."

Similarly, Mr. Justice Stone, speaking for the Supreme Court of the State of Illinois in *The People* v. *Callopy* (1934), 358 Ill. 11, 14, 192 N. E. 634, 635-636, in reference to the extent of the judicial power granted to the courts of the State of Illinois by that State's Constitution, said:

> "Judicial power is vested in the Supreme Court and other Courts of this State, but what constitutes judicial power is not defined nor limited by the Constitution. It must be said, therefore, that, so far as the provisions or limitations of the Constitution are concerned, there is vested in this Court all power judicial in its nature. In order to ascertain what is meant by judicial power as vested in the Courts of this State by the Constitution, recourse must be had to the history of our institutions prior to and at the time of the adoption of the Constitution, and to the common law as it existed in this country at that time."

These fundamental principles are so conclusively established, and so in accord with reason, that further citation of authorities would serve no useful purpose in establish-

ing the proposition that as between a State and citizens of another State, the judicial power of courts within the United States does not extend beyond controversies which, under the settled principles of public and international law as existing at the time of the grant of such judicial power, are proper subjects of judicial cognizance. Many of the other authorities hereinafter cited will enunciate and reiterate these same principles.

2. An action to enforce, either directly or indirectly, the revenue laws of another State, presents no controversy which, under the settled principles of public and international law, is a proper subject of judicial cognizance.

Under the settled principles of public and international law, the courts of one State *have no jurisdiction* of an action to enforce, either directly or indirectly, that other state's:

(a) political laws:

Cherokee Nation v. *Georgia* (1831), 5 Pet. 1, 75, 8 L. ed. 25, 75.

Georgia v. *Stanton* (1867), 6 Wall. 50, 77, 18 L. ed. 721, 725.

Kentucky v. *Dennison* (1860), 24 How. 66, 108-109, 16 L. ed. 717, 729-730.

Dicey's Conflict of Laws, 5th ed. p. 212.

(b) penal laws:

Wisconsin v. *Pelican Ins. Co.* (1888), 127 U. S. 265; 32 L. ed. 239; 8 S. Ct. 1370.

Oklahoma v. *Gulf Col. & Santa Fe Ry. Co.* (1910), 220 U. S. 290; 55 L. ed. 469, 31 S. Ct. 437.

Huntington v. *Attrill* (1892), 146 U. S. 657; 36 L. ed. 1123; 13 S. Ct. 224.

Huntington v. *Attrill* (1893), A. C. 150 (Eng.).

Gibb, International Law of Jurisdiction (1926), p. 253.

Beale (1935), The Conflict of Laws, Sec. 443.1.

American Law Institute (1934), Restatement of the Law of Conflict of Laws, Sec. 611.

Dicey's Conflict of Laws, 5th ed. p. 212.

Story's Conflict of Laws (1834), Sec. 620 at p. 516.

(c) revenue laws:

In re Visser v. *Drukker* (Eng., 1929), 1 Ch. 877.

Municipal Council of Sidney v. *Bull* (Eng., 1909), 1 K. B. 7.

Moore v. *Mitchell* (C. C. A. 2d., 1929); 30 Fed. 2d. 600; 65 A. L. R. 1352; Aff'd on another ground, 1929, 281 U. S. 18, 74 L. ed. 674, 50 S. Ct. 175.

State of Colorado v. *Harbeck* (1921), 232 N. Y. 71, 133 N. E. 357.

Arkansas v. *Bowen* (1894), 3 App. Cases, D. C. 537, Aff'g 20 D. C. Reps. 291.

State of Maryland v. *Turner* (1911), 132 N. Y. Supp. 173.

Estate of Martin (1930), 240 N. Y. Supp. 393,

And see:

Henry v. *Sargent* (1843), 13 N. H. 321 (41), 332.

Kentucky v. *Dennison* (1860), 24 How. 66, 108-109, 16 L. ed. 717, 729-730.

New York Trust Co. v. *Island Oil & Transport Corp.* (1926), 11 Fed. 2d. 698.

Gibb, International Law of Jurisdiction (1926), p. 253.

Beale (1935), The Conflict of Laws, Secs. 610.1, 610.2 and 443.1.

American Law Institute (1934), Restatement of the Law of Conflict of Laws, Sec. 610.c.
Story's Conflict of Laws (1834), Sec. 257, at p. 220.
Dicey's Conflict of Laws, 5th ed., p. 212.

In Dicey's Conflict of Laws, 5th ed., these settled principles of public and international law are crystallized by that author into a rule, as stated at page 212:

"Rule 54. *The Court has no jurisdiction* to entertain an action—

(1) for the enforcement, either directly or indirectly, of a penal, revenue, or political law of a foreign state; or

(2) where the grounds of the action involve an act of state." (Italics ours.)

The rendition of a judgment upon any claim which, in its original nature, was a penal or revenue claim does not so change the nature of the obligation that courts otherwise incompetent to entertain jurisdiction of such claims are thereby rendered competent.

Wisconsin v. *Pelican Ins. Co.* (1888), 127 U. S. 265, 32 L. ed. 239, 8 S. Ct. 1370.
Huntington v. *Attrill* (1892), 146 U. S. 657, 36 L. ed. 1123, 13 S. Ct. 224.
Huntington v. *Attrill* (1893), A. C. 150 (Eng.).
Arkansas v. *Bowen* (1894), 3 App. Cases D. C. 537, Aff'g. 20 D. C. Reps. 291.
Beale (1935), The Conflict of Laws, Sec. 443.1.
American Law Institute (1934), Restatement of The Law of Conflict of Laws, Secs. 443, 444.
Gibb, International Law of Jurisdiction (1926), p. 253.
Piggott "Foreign Judgments and Jurisdiction" (1908), Vol. I, at p. 92.
Dicey's Conflict of Laws, 5th ed., pp. 212-214.

On the settled principles of public and international law, in the absence of specific constitutional or statutory authorization, courts have no jurisdiction for the enforcement, either directly or indirectly, of a political law, for the reason that the exercise of the political power is a function not properly belonging to the judiciary. As stated by Mr. Justice Thompson, even though dissenting from this court's refusal to entertain jurisdiction in *Cherokee Nation* v. *Georgia* (1831), 5 Pet. 1, 75, 8 L. ed. 25, 75:

> "I, certainly, as before observed, do not claim, as belonging to the judiciary, the exercise of political power. That belongs to another branch of the government. The protection and enforcement of many rights secured by treaties, most certainly do not belong to the judiciary. *It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.*" (Italics ours.)

See also:

Kentucky v. *Dennison* (1860), 24 How. 66, 108, 110, 16 L. ed. 717, 729, 730.

Georgia v. *Stanton* (1867), 6 Wall. 50, 77, 18 L. ed. 721, 725.

New Hampshire v. *Louisiana* (1882) and *New York* v. *Louisiana* (1882), 108 U. S. 76, 27 L. ed. 68, 2 S. Ct. 176.

Likewise, on settled principles of public and international law, in the absence of such specific constitutional or statutory authorization, courts have no jurisdiction to entertain an action for the extrastate enforcement of foreign revenue or penal laws, though the reasons therefor have not been so frequently and clearly enunciated. In denying such jurisdiction in respect to penal laws, courts have almost without exception seemingly deemed it sufficient to refer only to Mr.

Chief Justice Marshall's statement in *The Antelope*, 10 Wheat. 66, 123, 6 L. ed. 268, 282, that:

> "The courts of no country execute the penal laws of another."

A very similar and almost as often quoted remark of Lord Mansfield in *Holman* v. *Johnson* (1775), 1 Cowp. 341, 343, 98 Eng. Reps. (Full Reprint) 1120, 1121, namely:

> "For no country ever takes notice of the revenue laws of another."

has sufficed as a basis without a full statement of the real and underlying reasons, for many subsequent decisions denying extrastate enforcement to foreign revenue laws.

In *Moore* v. *Mitchell* (1929), 30 Fed. 2d. 600, 604 (Aff'd. on another ground, 1929, 281 U. S. 18, 74 L. ed. 673, 50 S. Ct. 175), L. Hand, circuit judge, in his opinion, elaborated on the reasons underlying the rule. His statements are, so far as appellee can ascertain, the only judicial discussion of any of the principles involved. Appellee therefore respectfully indulges in a quotation of some length from that opinion:

> "While the origin of the exception in the case of penal liabilities does not appear in the books, a sound basis for it exists, in my judgment, which includes liabilities for taxes as well. Even in the case of ordinary municipal liabilities, a court will not recognize those arising in a foreign state, if they run counter to the 'settled public policy' of its own. Thus a scrutiny of the liability is necessarily always in reserve, and the possibility that it will be found not to accord with the policy of the domestic state. This is not a troublesome or delicate inquiry when the question arises between private persons, but it takes on quite another face when it concerns the relations between the foreign state and its own citizens or even those who may be temporarily within its borders. To pass upon the provisions for the public order of another state is, or at any rate should

be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are intrusted to other authorities. It may commit the domestic state to a position which would seriously embarrass its neighbor. Revenue laws fall within the same reasoning; they affect a state in matters as vital to its existence as its criminal laws. No court ought to undertake an inquiry which it cannot prosecute without determining whether those laws are consonant with its own notions of what is proper."

In Beale (1935) "The Conflict of Laws," at page 1638, the author in discussing the problem of extrastate enforcement of foreign revenue laws, comments as follows upon the quoted excerpt from the opinion of L. Hand, circuit judge:

"It is undoubtedly true that in many instances the courts have repeated the rule without careful consideration, and merely as a literally corollary to the proposition that no state will enforce the penal laws of another state. Nevertheless, it is not difficult to find fundamental considerations which seem to furnish ample justification for the refusal to allow the action. As Judge L. Hand pointed out, the relation between a foreign state and its citizens is properly no concern of the forum. Furthermore, since the interest of the foreign state is directly affected, the interstate relation should be determined not by the court, but by the respective sovereign powers."

In Dicey's Conflict of Laws, 5th ed., at p. 214, the author, under "Comment," says:

"*Revenue Laws:* While refusal to enforce penal laws is easily understood, it is at first sight more difficult to justify the refusal of English Courts to enforce the revenue laws of foreign states. ***Not only can no action be brought to recover a revenue demand of a foreign government, whether in a judgment or not,*** but statutory authority exists under which negotiable instruments which are not duly stamped according to the law

of their place of issue are nevertheless held valid in England. The ground of this refusal to exercise jurisdiction may have been in some degree commercial convenience, and it may then be compared with the rule that contracts in England will not be held invalid merely because they aim at the contravention of foreign revenue laws, a doctrine which appears still to be part of the law of England. *The refusal may, however, be justified on ground of public policy. Revenue legislation by foreign states might be definitely injurious to British interests,* or it might be aimed at foreigners under circumstances, *e. g.*, in the case of political refugees, in which enforcement in England would be held to be contrary to public policy. *Inasmuch as the application of this principle and consequent differentiation between foreign revenue demands might prove a source of political embarrassment, the Courts, in refusing as a matter of principle, to enforce any revenue legislation, may be deemed to be observing a doctrine of public importance.* The Court of Appeals of New York has referred to the 'well settled principle of private international law which precludes one state from acting as a collector of taxes for a sister state and from enforcing its penal or revenue laws as such. The rule is universally recognized that the revenue laws of one state have no force in another.' *State of Colorado* v. *Harbeck* (1921), 232 N. Y. 71, 133 N. E. 357." (Italics ours.)

As will be readily noted, courts and writers, where more than a perfunctory reason is given for the non-enforcement extraterritorially of foreign penal and revenue laws, assign as a reason the lack of concern of the state of the forum with the governmental interests of the foreign state. It is earnestly and respectfully submitted that, as suggested by Dicey's Conflict of Laws, 5th ed., p. 214, a more vital and compelling reason for the incompetency of courts to entertain actions for the enforcement of the revenue laws of another state is the consequent threat to the very existence and well being of the state of the forum, and hence, is a mat-

ter properly and only cognizable by a branch of the state government other than the judicial. That this is true becomes apparent upon examination of the nature and extent of a state's power to tax, and the guaranties against the oppressive use of that power.

The profuse citation of authorities is unnecessary in submitting to this court that, except in so far as the States of the United States are limited by the Constitution of the United States, they are, in relation to the power of taxation, independent sovereigns. As stated in *Lane County* v. *Oregon* (1868), 7 Wall. 71, 77, 19 L. ed. 101, 105, by Mr. Chief Justice Chase, in discussing the effect of the Constitution upon the sovereign powers of the State in reference to taxation:

> "In respect, however, to property, business and persons, within their respective limits, their (the States') power of taxation remain and remains entire."

Moreover, the power to tax is measured only by the needs of the government and the property within its jurisdiction. In respect to the extent of the power and the guaranties against its oppressive use, Mr. Chief Justice Marshall, in *McCulloch* v. *Maryland* (1819), 7 Wheat. 316, 428-431, 4 L. ed. 579, 607, said:

> "It is admitted that the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the Legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. * * * That the power to tax involves the power to destroy; * * * are propositions not to be denied."

It is likewise clear that the remedy for oppressive taxation does not lie with the judicial branch of the government, *Springer* v. *United States* (1880), 102 U. S. 586, 594, 26 L. ed. 253, 256; that the Legislature of any State may adopt such means and methods, judicial or otherwise, for the collection of its revenue as it deems expedient and advisable so long as there is no violation of the constitutional guaranty of due process of law, *Kelly* v. *Pittsburgh* (1881), 104 U. S. 78, 26 L. ed. 658; *Ballard* v. *Hunter* (1906), 204 U. S. 241, 255-258, 51 L. ed. 461, 472, 27 S. Ct. 261; and that except in so far as a government has subjected itself to the judgment of its courts in the collection of its revenue, the judiciary is without power or authority to affect that collection in the absence of an abuse of constitutional power. In *Cheatham* v. *Norvekl* (1875), 92 U. S. 85, 88-89, 23 L. ed. 561, 563, Mr. Justice Miller says:

> "It will be readily conceded, from what we have here stated, that the government has the right to prescribe the conditions on which it will subject itself to the judgment of the courts in the collection of its revenues.
>
> "If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary."

And even to a greater extent does this apply to a State's subjecting itself to the control of Federal judiciary in respect to the collection of its taxes. See *Heine* v. *The Board of Levee Commissioners* (1873), 19 Wall. 655, 661, 22 L. ed. 223, 226, where Mr. Justice Miller said:

> "The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, state or national. In the case before us, the national sovereignty has nothing to do with it. The power must be derived from the

> Legislature of the State. So far as the present case is concerned, the State has delegated the power to the Levee Commissioners. If that body has ceased to exist, the remedy is in the Legislature either to assess the tax by a special statute or to vest the power in some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any Federal court. It is unreasonable to suppose that the Legislature would ever select a Federal Court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the Federal Government of the legislative functions of the state government. It is a most extraordinary request, and a compliance with it would involve consequence no less out of the way of judicial procedure, the end of which no wisdom can foresee."

In addition, there is no constitutional prohibition against either multiple taxation—

> *Davidson* v. *New Orleans* (1877), 96 U. S. 97, 24 L. ed. 616.
>
> *Coe* v. *Errol* (1885), 116 U. S. 517, 524, 29 L. ed. 715, 718, 6 S. Ct. 475.

or, too clear for the citation of authority, the imposition of a retroactive tax.

And, finally, taxes are not debts in the sense that they are liabilities arising out of contract, express or implied; taxes are enforced proportionate contributions to the State, levied by the authority of that State for all public needs, owe their existence to an exercise of the legislative power, and do not depend for their validity and enforcement upon the assent of the taxpayer. In *Meriwether* v. *Garrett* (1880), 12 Otto. 472, 513, 26 L. ed. 196, 205, Mr. Justice Field said:

> "Taxes are not debts. It was so held by this court in the case of *Lane Co.* v. *Oregon*, reported in 7th Wall. 71. Debts are obligations for the payment of money

> founded upon contract, express or implied. Taxes are impositions levied for the support of the government, or for some special purpose authorized by it. The consent of the taxpayer is not necessary to their enforcement. They operate in invitum. Nor is their nature affected by the fact that in some States, and, we believe, in Tennessee, an action of debt may be instituted for their recovery. The form of procedure cannot change their character."

See also:

Bristol v. *Washington County* (1899), 177 U. S. 132, 145, 44 L. ed. 701, 707, 20 S. Ct. 585.

It is apparent from this summary of the nature, extent and exercise of the power to tax that it is a vital and jealously guarded attribute of sovereignty, the control of which is not delegated to the judicial branch of the government, and that the enforcement of revenue laws is solely in the furtherance of the governmental, and not the proprietary, interests of the State. Moreover, and of controlling importance here, it also appears from this summary that the collection of taxes is a matter primarily of a political nature, and so vital to the sovereign interests of a State as to be outside the proper scope of judicial cognizance, power and interference, unless, and then only in so far as and to the extent that, a State, through the legislative branch of its government, specifically subjects itself thereto. In brief, the continued existence and well-being of any State or nation is dependent upon the maintenance of its revenues. Therefore, so far as may be, it is to the paramount interests of each State and its citizens, to the exclusion of all others, to maintain unimpaired its own ability to raise revenue. To the extent that other States enter and collect revenue for their own exclusive and governmental purposes, that ability is impaired. The measure of this impairment,

where the levies are constitutional, is the fiscal needs and extrastate collections of the foreign State, over which the State of the forum and its citizens have no control except in so far as they may prevent or limit collections within their own State by the foreign State. It is neither in accord with the settled principles of public and international law, nor with reason, to assume that a State which does not subject itself to the control of its courts in the collection of its own revenue would *unconditionally* subject itself to the control of its courts in the collection of the revenue of a foreign State. The absence of any limitations in the Constitution of the United States against multiple taxation, the imposition of retroactive taxes and oppressive and confiscatory taxes, otherwise constitutionally levied and assessed, permits as between the several States of the United States questions to arise in relation to extrastate enforcement of revenue laws which are questions only of State and public policy, and therefore, upon familiar principles, determinable solely by a branch of the government other than the judicial.

In addition to the cases heretofore cited, which recognize the nonjudicial nature and the consequent incompetency of courts to take cognizance of this question where no enabling, definitive, or limiting legislation provides therefor, in further recognition of these same principles, several States of the United States have enacted reciprocity statutes in respect to the extrastate collection of inheritance taxes; foreign countries have successfully negotiated more than a dozen bilateral conventions providing for mutual administrative assistance in tax collection matters, and the League of Nations has drafted a model treaty with respect to extrastate tax collections. In addition, students of the subject have suggested a number of alleged feasible means of meeting this problem, such as reciprocal legislation, an

Act of Congress, or interstate compacts under the "compact clause" of the Constitution of the United States.

See Note: 48 Harvard Law Rev. 828.

It should be observed that the means and methods adopted and suggested looking toward a solution of this problem recognize the paramount interest of a State in maintaining unimpaired its own ability to raise revenue, and in recognition of this primary interest of each State, do not require or propose that a State shall give extraterritorial effect to foreign revenue demands, confiscatory in operation, or contrary to its own public policy.

It is respectfully asserted that no one could reasonably contend that a State's interest in assisting a sister State in the collection of its revenue is, or should be, subordinate to its interest in maintaining its own revenue for its own governmental purposes. Unless and until adequate protection is given the State's primary interest in the maintenance of its own revenue, no State should be compelled to assist any other State in the furtherance of that State's governmental interests through extrastate enforcement of the latter's revenue laws. Adequate protection demands, for example, reciprocity, priority of right and lien in respect to the collection of its own revenue claims within its territorial jurisdiction, and conditions effectively excepting from the duty of extrastate enforcement such foreign revenue demands as it shall deem confiscatory in operation, or subversive of its own interests, or the interests of its citizens. Appellee submits that as clear as the necessity for these safeguards is, it is no less clear that their erection is not a matter for the judiciary. By the very nature of the interest to be protected and the provisions necessary for that protection it is submitted that legislative action is re-

quired, first, to determine what safeguards shall be deemed adequate; and, second, to erect those safeguards.

Appellant, on page 30 of its brief, has urged on this court the obsolescence of the principle against the extrastate enforcement of revenue legislation and its inapplicability, in the United States, because the "United States is all one country and the rules applicable to international relations ought not to apply." Apart from ignoring the dual sovereignties set up by the Constitution of the United States, appellant seemingly ignores the functional consequences which would arise out of a recognition of the several sovereignties for the purpose of the levy and assessment of taxes, and a nonrecognition of these several sovereignties for the purpose of the collection of taxes. It would be difficult to imagine a situation more chaotic as between the several States of the United States than where there was a complete decentralization in the levy of a tax, but centralization without coordination and integration in the collection of a tax. Within the United States at the present time, the problem of coordination and integration of Federal, State and local tax systems has become a most vexatious problem: James K. Hall, in "The Coordination and Integration of Federal, State and Local Tax Systems," 10 Washington Law Review, 22-24, presents the problem and the present chaotic condition in as brief a form as its complexity will permit. The need for cooperation, coordination and integration of the countless number of taxing units throughout the United States is very real, but it cannot be successfully accomplished through judicial action, and certainly not by means of obliterating State sovereignties for the purpose alone of *collecting* taxes.

Appellant states, on page 26 of its brief, that it submits its case to this court on the reasoning of the New Jersey

court in *People* v. *Coe Mfg. Co.* (1932), 10 N. J. Misc. 1161, 162 Atl. 872, Aff'd. (1934), 172 Atl. 198. Inasmuch as appellant in its brief has quoted both from the opinion of the intermediate court and the opinion of the court of last resort in that case, and which opinions do not decide the case on the same ground, it is impossible to ascertain appellant's position. If appellant relies on the reasoning in the opinion of the intermediate court, it is, in effect, asking this court to reverse both *Wisconsin* v. *Pelican Ins. Co.* (1887), 127 U. S. 265, 32 L. ed. 239, 8 S. Ct. 1370, and *Huntington* v. *Attrill* (1892), 146 U. S. 657, 36 L. ed. 1123, 13 S. Ct. 224, because those cases clearly hold, and they have many times since been approved, that the "full faith and credit" clause of the Constitution of the United States does not preclude an inquiry into the original nature of the claim for the purpose of determining whether or not the claim is of such nature that the court is authorized to enforce it. In so far as appellant may rely upon the reasoning of the New Jersey Court of Errors and Appeals in 172 Atl. 198, it must necessarily contend that the original tax which it is seeking to collect was contractual in its inception. At the outset it is apparent from the nature of the tax involved in the *Coe* case, namely a franchise tax, and the nature of the tax here involved, namely an income tax, that there is no similarity. A franchise tax is, in essence, a license, and only as such does it fall within the American Law Institute's Restatement of the Law of Conflict of Laws (1934), Sec. 443, subsec. d. Appellant, however, on page 26 of its brief, no doubt in reliance upon Section 226.02 (h) of the Statutes of Wisconsin, set out on page 6 of its brief, argues that appellant here "pledged itself • • • to pay the Wisconsin income tax." Suffice it to say that neither the provision of the Wisconsin statute quoted nor any other of the asserted im-

port was in effect at the time of the accrual of the tax liability in question.

However, as has been pointed out above, a tax liability is not, expressly or by implication, contractual in its nature. The case for extrastate enforcement of tax liabilities is as ably presented as the nature of the problem permits by Robert A. Leflar, "Extrastate Enforcement of Penal and Governmental Claims" in 46 Harvard Law Review 193, relied upon and cited on page 27 of appellant's brief. This strong proponent for the extrastate collection of taxes, on pages 220-221, says, in respect to predicating extrastate enforcement on the contractual nature of any given tax liability:

> "Recognition of this urgent need for extrastate enforcement of tax liability has produced a contention that some varieties of taxes, notably the inheritance tax, are contractual, or at least so based upon the consent of the taxpayer as not to be compulsory, and therefore not penal in nature. This argument is a technical one, to the effect that certain privileges such as that of taking the property is a decedent by will or descent are creatures of the law and can be conditional as the law pleases, so that one who accepts such a privilege from the law must assent to all the conditions, including the payment of taxes, which the governing law has chosen to impose. The same argument could of course be applied to corporate franchise taxes or to any other tax levied in return for a privilege conferred by the state. It probably could not be applied to income taxes or to property taxes generally, though ingenuity might well carry it as far as the limits, if any, of the conception that the rights and privileges of men are all creatures of the law. Needless to say, that is not an accurate analysis of the nature of the obligation to pay taxes. It is an analysis conjured up to fit the supposed needs of an occasion. Besides, it does not meet the problem. The trouble lies deeper. The need is for extrastate enforcement of all legitimate tax liabilities, not merely some of them. The reasons for such enforce-

ment have nothing to do with the allegedly consensual nature of the liability, and the reasons against enforcement apply equally to the taxes which can be called consensual and to those which cannot. The point is simply irrelevant."

Upon authority, and upon reason, it is respectfully submitted that due regard for the independent sovereignty of the several States of the United States, and of the peculiarly vital interest of each of these States in the determination of this problem of extrastate enforcement of revenue laws, should make this court extremely hesistant to extend the jurisdiction of the District Courts of the United States to controversies of this nature which, under the settled rules of public and international law, are not within the proper scope of judicial cognizance. See:

Healy v. *Ratta* (1934), 292 U. S. 263, 271, 78 L. ed. 1248, 1254, 54 S. Ct. 700, 703.

Mathews v. *Rogers* (1931), 284 U. S. 521, 525, 76 L. ed. 447, 452, 52 S. Ct. 217.

Finney v. *Guy* (1902), 189 U. S. 335, 346, 47 L. ed. 839, 845, 23 S. Ct. 558.

Warren, Federal and State Court Interference, 43 Harv. Law Rev. 346, 378.

B. *An action to enforce, either directly or indirectly, a penal law for the protection of the revenue, or the revenue law, of a foreign State is not an action "of a civil nature" within the meaning of Section 24 of the Judicial Code of the United States (28 U. S. C. A., Sec. 41).*

The jurisdiction of district courts of the United States is statutory, and therefore definitely limited. Section 24 of the Judicial Code, 28 U. S. C. A., Sec. 41, provides:

"ORIGINAL JURISDICTION: The District Courts shall have original jurisdiction as follows:

> (1) United States as plaintiff; civil suits at common law or in equity. First: Of all suits of a *civil nature*, at common law or in equity, brought by the United States, or any officer thereof, authorized by law to sue, or between citizens of the same state claiming lands under grants from different states; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or valueof $3,000.00, and (a) arises under the Constitution of laws of the United States, or treaties made, or which shall be made under their authority, or (b) as between citizens of different states, or (c) as between citizens of a state and foreign states, citizens or subjects * * *." (Italics ours.)

For jurisdictional purposes, the nature of an original cause of action is not so changed by the rendition of a judgment upon it that courts incompetent to entertain the original action are rendered competent by the rendition of a judgment upon such action. Causes of action not "of a civil nature" do not become such upon the rendition of judgment. In *Wisconsin* v. *Pelican Insurance Co.* (1888), 127 U. S. 265, 293, 32 L. ed. 239, 244, Mr. Justice Gray says:

> "The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."

See also:

American Law Institute, Restatement of the Law of Conflict of Laws, Secs. 443, 444.

Piggott, Foreign Judgments and Jurisdiction (1908), Vol. 1, at page 92.

Dicey's Conflict of Laws, 5th ed., p. 212.

The jurisdiction conferred upon District Courts of the United States of certain actions "of a civil nature" refers to the nature of the action, and not to its form.

Wisconsin v. *Pelican Ins. Co.* (1888), 127 U. S. 265, 293, 32 L. ed. 239, 244.

Ames, et al. v. *Kansas*, and *Kansas Pacific Ry. Co.* v. *Kansas* (1883), 111 U. S. 449, 28 L. ed. 482.

State of Indiana v. *Allegheny Oil Co., et al.* (1898), 85 Fed. 870.

The intent and meaning of the words "suits of a civil nature" seems to appellee to be well stated in the case of *Indiana* v. *Allegheny Oil Co., supra,* by District Judge Baker, at page 873:

> "And, if this were not so, still the suit must be held not to be within the jurisdiction of this court, because, although a civil action in form, it is in effect a suit to enforce a penal statute of the state. The contention that the action is civil, and not penal, in its nature, because the statute of the state declares it to be a civil action, is untenable. If Congress had intended that the form of the action should determine the right of removal, apt language would have been used to indicate that purpose. The language employed is "suits of a civil nature." If the form, rather than the nature, of the action had been intended to determine the right of removal, Congress would undoubtedly have used the words "suits civil in form," or perhaps the more general expression "civil suits," instead of using the language employed. In using the language "suits of a civil nature" it discloses the intent that the court should look beyond the form to the nature or purpose of the suit."

1. An action to enforce, either directly or indirectly, a penal law for the protection of the revenues of a foreign State is not an action "of a civil nature."

It affirmatively appears from the transcript of the judgment appellant is seeking to enforce that the judgment is based in part upon a pecuniary penalty for the violation of the statutes of the State of Wisconsin for the protection of its revenue. (Cert. 9, 10.)

In *Wisconsin* v. *Pelican Ins. Co.* (1888), 127 U. S. 265, 290-291, 32 L. ed. 239, 244, 8 S. Ct. 137, an action was brought by the State of Wisconsin against Pelican Insurance Company, a foreign corporation, as an original action in the Supreme Court of the United States upon a judgment rendered by a Wisconsin court for penalties imposed by a statute of Wisconsin for the defendant's failue to make a return in respect to its business and property to the insurance commissioner of the State of Wisconsin, as required by that statute. The defendant demurred on the ground that the action was not an action of a "civil nature" within the original jurisdiction of the Supreme Court of the United States. The demurrer was sustained and judgment entered for the defendant on the demurrer. Mr. Justice Gray says, 32 L. ed. 239, 244:

> "The rule that the courts of no country can execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery *of pecuniary penalties for any violation of statutes for the protection of its revenue*, or other municipal laws, and to all judgments for such penalties. If this were not so, all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment. Whart. Confl. L., Sec. 833; Westlake, Internat. L., 1st ed., Sec. 388; Piggott, Foreign Judg., 209, 210." (Italics ours.)

Mr. Justice Gray then, after a discussion of the limitation of its original jurisdiction to action of a "civil nature," found that, irrespective of the judgment entered on the

claim, the action was not an action of a "civil nature," and not within the original jurisdiction of the Supreme Court of the United States.

It may be argued that because a portion only of the judgment which was secured by Milwaukee County was for a penalty, that the decision of the Supreme Court of the United States in the case of *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 471, 32 L. ed. 239, is not applicable. That position, however, is not at all tenable. The judgment must be considered in its entirety.

An action, though only in part for the collection of a penalty, is an action on a penal claim, and, though reduced to judgment, is nevertheless still of a penal nature.

In the case of *State of Arkansas* v. *Bowen*, 3 App. Cases D. C. 537, the defendant and appellee, Bowen, had executed as surety the official bond of one Turner, a collector of revenue for one of the counties (a political subdivision) of the State of Arkansas. For an alleged default on the part of Turner, the collector of revenue, the defendant and appellee, Bowen, was sued on the official bond and judgment was entered against him for the amount of the defalcation, and in addition a penalty of twenty-five per centum imposed by law. Suit was instituted upon this judgment against the defendant and appellee in the District Court for the District of Columbia. In the trial court, judgment was entered for the plaintiff which, on appeal, was reversed (20 Dist. of Colum. Reps. 291), and on appeal to the Court of Appeals of the District of Columbia the reversal was affirmed on the ground that the District Court had no jurisdiction of an action to enforce a foreign penal law. The court said (3 App. Cases, Dist. of Colum. 537), 545:

> "But while to some extent it is sought here to recover the money due to the county and unlawfully retained

> by the collector, the judgment is not confined to that. It embraces a penalty as well, and a double penalty; and we cannot in this action separate the claim for the penalty from the claim for money had and received. While the record shows how much was penalty and how much was money actually retained, yet the judgment is one and indivisible, and we could not apportion the recovery."

It will be noted that in the case last cited, the original cause of action, apart from the penalty, was of such nature as unquestionably to be enforceable in an ordinary common law action because of its contractual nature. Nevertheless, the court held that since the judgment included, in part, a pecuniary penalty, and since a judgment is indivisible, it must be denied extraterrritorial enforcement on the principles announced in the *Pelican* case.

2. An action to enforce, either directly or indirectly, a revenue law of a foreign State is not an action "of a civil nature."

Appellant on page 7 of its brief states that "civil" is intended to refer to all matters not criminal. This statement as submitted is altogether too broad in its generality. In

1 Bouvier Law Dictionary, page 329

"civil action" is defined as:

> "an action which has for its object the recovery of private or civil rights in compensation for their infraction."

and in

Andrews Law Dictionary, page 185

"civil" is defined as:

> "concerning the rights of and wrongs to individuals considered as private persons, in contradistinction to criminal, or that which concerns the whole political society."

The collection of taxes is a peculiar proceeding and need not and is not ordinarily effected through judicial means. When an action for the collection of taxes is brought in a court of law it is to vindicate neither private nor proprietary rights, but rights of sovereignty and concerns the whole political society. It is submitted, therefore, that this action is not a suit "of a civil nature."

Appellee respectfully asserts that upon the settled principles of public and international law established by the above mentioned authorities, the District Court of the United States has no jurisdiction to entertain this action unless Article IV, Section 1 of the United States Constitution, as contended by appellant on page 14 of its brief, confers jurisdiction.

II.

Article IV, Section 1 of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. 678) do not compel the courts within the United States to entertain jurisdiction of an action, either directly or indirectly, for the extrastate enforcement of the revenue laws of one of the States of the United States.

Article IV, Section 1, United States Constitution, provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Act of May 26, 1790, Ch. 11 (28 U. S. C. A. No. 687), provides for the proper authentication of a judgment of a

sister state and further states that all such authenticated judgments

> "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the court of the state from which they are taken."

A. *The framers of the Constitution of the United States did not, by Article IV, Sec. 1 of that Constitution, intend to increase or extend the jurisdiction of the courts of the several states of the United States.*

In Story's Commentaries of the Constitution of the United States (1833), Vol. 3, it is stated at page 176:

> "The general rule of the common law recognized both in England and America, is that foreign judgments are prima facie evidence of the rights and matter, which they purport to decide."

and at page 178:

> "The framers of both instruments (The Articles of Confederation and the Constitution of the United States) must be presumed to have known that by the general rules of comity between nations, and the long established rules of the common law, both in England and in America, foreign judgments were prima facie evidence of their correctness."

and at page 180:

> "They (the framers of the Constitution) intended to give, not only faith and credit to the public acts, records, and judicial proceedings of each of the states, such as belonged to those foreign nations and tribunals; but to give them *full* faith and credit; that is, to attribute to them positive and absolute verity, so that they cannot contradict it, or the truth of them be denied, any more than in the State where they originated."

Bearing in mind, therefore, the intent of the framers of the Constitution to provide a "more perfect Union" without

destroying the sovereignty of the States of which that Union was to be composed, the weight and effect as evidence given foreign judgments at the time of the framing of that instrument, and the language used in the Constitution itself amply support Mr. Story's interpretation of the intent of the framers when he says the framers of the Constitution "intended to give * * * to the judicial proceedings of each of the States * * * full faith and credit; *that is, to attribute to them positive and aboslute verity,* * * *." (Italics ours.) It would appear that the framers of the Constitution had intended to lay down a rule of evidence, and not of jurisdiction.

B. *Article IV, Sec.* 1 *of the Constitution of the United States, and the Act of May* 26, 1790, *Chap.* 11 (28 *U. S. C. A. Sec.* 687) *have, by this court, been interpreted as not increasing or extending the jurisdiction of the courts within the United States.*

This court has, on occasions too numerous to mention, said that the "full faith and credit" clause of the Constitution established a rule of evidence rather than of jurisdiction.

Anglo American Provision Co. v. *Davis Provision Co.*, 191 U. S. 373, 374, 48 L. ed. 225, 227,

where Mr. Justice Holmes said:

> "The precise point has not been decided by this Court, but it has been laid down in cases which raise greater difficulties than the present, that this provision of the Constitution establishes a rule of evidence rather than of jurisdiction."

And in *Huntington* v. *Attrill* (1893), 146 U. S. 657, 685, 36 L. ed. 1123, 1134, Mr. Justice Gray said, in reference to this provision of the Constitution and the supplementary legislation pertaining thereto:

> "These provisions of the Constitution and the laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow • • • and they confer no new jurisdiction on the courts of any state; and therefore do not authorize them to take jurisdiction of a suit or prosecution of such a penal nature, that it cannot, on settled rules of public and international law, be entertained by the judiciary of any other state than that in which the penalty was incurred."

This constitutional provision and the supplementary legislation in reference thereto has been similarly interpreted in respect to the jurisdiction of the courts of the United States.

Wisconsin v. *Pelican Ins. Co.* (1887), 127 U. S. 265, 32 L. ed. 239.

C. *"Full faith and credit" under Article IV, Sec. 1 of the Constitution of the United States, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A. Sec. 687), does not compel courts to assume jurisdiction of actions concerning which they are otherwise incompetent.*

This court, in *Huntington* v. *Attrill* (1893), 146 U. S. 657, 36 L. ed. 1123, by negative implication held that a judgment based upon a foreign penal law was not, under the "full faith and credit clause," entitled to the benefit of the mandatory provision of the Constitution and supplementary legislation to "full faith and credit." In *Anglo American Provision Co.* v. *Davis Provision Co.* (1903), 191 U. S. 373, 374-76, 48 L. ed. 225, 227, it was held that "full faith and credit" was not denied an Illinois judgment by the New York Code of Civil Procedure, Sec. 1780, which, as construed, precluded the maintenance of an action on such judgment by one foreign corporation against another. Mr. Justice Holmes, after first observing that the "full faith and credit" clause was a rule of evidence rather than a rule of jurisdiction, said:

"The Constitution does not require the State of New York to give jurisdiction to the Supreme Court against its will. If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitution and the Act in pursuance of it which Congress has passed * * * but the Constitution does not require the State to provide such a court * * *. If the State does provide a court to which its own citizens may resort in a certain class of cases, it may be that citizens of other states of the Union also would have a right to resort to it in cases of the same class * * *, but that right, even when the suit was upon a judgment of another state, would not rest on the first section of Article IV, on which alone the plaintiff relies or can rely, but would depend on the second section, entitling the citizens of each State to all privileges and immunities of citizens in the several states. The plaintiff is not a citizen within this section * * * and did not set it up."

The mandatory force of the "full faith and credit" clause, as supplemented by the legislation of Congress, has not as yet been fully defined, expanded and limited by this court, particularly in respect to its relation to the "privileges and immunities" clause of the Constitution. In two comparatively recent cases, namely, *Broderick* v. *Rosner* (1934), 79 L. ed. advance opinions 619, 623, and *McKnett* v. *St. Louis & S. F. Ry. Co.* (1933), 292 U. S. 230, 233, 78 L. ed. 1227, 1229, 54 S. Ct. 690, this court has had occasion to review past decisions of this court in respect to the extent of the mandatory force of Article IV, Section 1 of the Constitution, and the Act of May 26, 1790, Chap. 11 (28 U. S. C. A., Sec. 687). In substance, this review concludes that under the existing decisions of this court, the "full faith and credit" clause in some instances requires a State court to take jurisdiction of an action to enforce a judgment recovered in another State, although it might have refused to entertain a suit on the original action as

obnoxious to its public policy, but that, though the constitutional limitations imposed by the "full faith and credit" clause abolished in large measure the general principles of public and international law by which local policy is permitted to dominate rules of comity, there is no compulsion upon the States to provide courts with a jurisdiction which they do not have under settled principles of public and international law. It is axiomatic, of course, that the mandatory force of the "full faith and credit" clause is no greater in respect to the courts of the United States than in respect to the courts of the several States. Though in these opinions it is stated or indicated that the room left by the "full faith and credit" clause for the play of conflicting policies of the several States is a narrow one, it is respectfully suggested that where, as here, the determination turns not solely upon comity but primarily upon the competency or authority of courts the mandatory force of the "full faith and credit" clause does not become operative, and therefore no question of falling within the room left for permissive play of conflicting policies of the several States arises.

In addition to the authorities heretofore cited, see also:

American Law Institute (1934), Re-Statement of the Law of Conflict of Laws, Sec. 443-d.

This seems the more clear since appellant derives no benefit from the "privileges and immunities" clause of the Constitution.

Conclusion.

Before stating its conclusion, appellee feels it to be its duty to call to this Court's attention one question which by reason of the narrow scope of the certificate of the United States Circuit Court of Appeals for the Seventh Circuit is perhaps excluded from the points which might properly be presented to this Court in this proceeding. However, as it does appear in the certificate that appellant invokes the jurisdiction of the District Court on the ground of diversity of citizenship, appellee hesitantly suggests to this Court that it consider whether or not the requisite diversity of citizenship exists.

Milwaukee County is a political subdivision of the State of Wisconsin, and in collecting income taxes levied and assessed under the law of the State of Wisconsin is an agent and instrumentality of that State in so far as it collects for the State itself the State's portion of such income tax. *In re State, et al.,* 1932 (Wisc.), 245 N. W. 844, 847. This Court has recently decided in *State Highway Commission of Wyoming* v. *Utah Construction Company,* 1928, 278 U. S. 194, 73 Law Ed. 262, 49 S. Ct. 104, that the requisite diversity of citizenship for invoking the jurisdiction of the District Courts of the United States does not exist in controversies between a state agency and a citizen of another state.

We beg the Court, therefore, in its consideration of the question certified to accept as properly presented to this Court on the record the question whether or not the requisite diversity of citizenship exists to confer upon the District Court of the United States jurisdiction of this cause irrespective of the other questions involved and raised in this brief.

Appellee respectfully submits that the District Court of the United States in and for the State of Illinois, though having jurisdiction of the parties, should *not* entertain jurisdiction of an action therein brought based upon a valid judgment for over $3000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon income tax due from the defendant to the State of Wisconsin, because (1) the District Court of the United States States for the Northern District of Illinois is without jurisdiction to entertain such an action, and (2) the "full faith and credit" clause of the Constitution of the United States and the Act of Congress, supplemental thereto, do not compel courts within the United States to entertain jurisdiction of such an action; and therefore that the question certified to this court by the Judges of the United States Circuit Court of Appeals for the Seventh Circuit should be answered in the negative.

Respectfully submitted,

IRVING HERRIOTT,
Attorney for M. E. White Company, Appellee.

W. WARD SMITH,
Of Counsel.

pp. 2 & 8 incl.

SUPREME COURT OF THE UNITED STATES.

No. 32.—October Term, 1935.

Milwaukee County, vs. M. E. White Company.	On Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

[December 9, 1935.]

Mr. Justice Stone delivered the opinion of the Court.

This case comes here under § 239 of the Judicial Code, 28 U. S. C. 346, on certificate of the Court of Appeals for the Seventh Circuit, which presents a question of law concerning which the instructions of this Court are desired for the proper decision of the case.

The relevant facts, as stated by the certificate, are that the appellant, Milwaukee County, a county and citizen of Wisconsin, brought suit in the District Court for Northern Illinois against M. E. White Company, appellee, a corporation and citizen of Illinois, to recover on a judgment for $52,165.84 which appellant had duly recovered and entered against the appellee in the Circuit Court of Milwaukee County, Wisconsin, a court of general jurisdiction. The judgment is said to be for taxes duly assessed against appellee, under Wisconsin statutes, upon income received from its business transacted within the state under state license. The district court dismissed the cause on the ground that, as the suit was in substance brought to enforce the revenue laws of Wisconsin, it could not be maintained in the district court in Illinois.

The question certified is as follows:

"Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?"

Appellee insists that the question should be answered in the negative (1) because such a suit is not within the judicial power conferred upon district courts by the Constitution and laws of the United States, and (2) because a judgment for taxes constitutes an exception to the requirement of the Constitution and statutes of

the United States that full faith and credit be given in each state to the public acts and judicial proceedings of every state.

1. By § 24 of the Judicial Code, 28 U. S. C., § 31, district courts are given original jurisdiction "of all suits of a civil nature at common law or in equity," where there is the requisite diversity of citizenship and the amount in controversy exceeds $3,000. In this grant of jurisdiction of causes arising under state as well as federal law the phrase "suits of a civil nature" is used in contradistinction to "crimes and offenses", as to which the jurisdiction of the district courts is restricted by § 24 (2) to offenses against the United States. Thus suits of a civil nature within the meaning of the section are those which do not involve criminal prosecution or punishment, and which are of a character traditionally cognizable by courts of common law or of equity. Such are suits upon a judgment, foreign or domestic, for a civil liability, of a court having jurisdiction of the cause and of the parties, which were maintainable at common law upon writ of debt, or of *indebitatus assumpsit*.[1]

Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes and we are free to reexamine it and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 292, et seq; compare *Fauntleroy* v. *Lum*, 210 U. S. 230, still the obligation to pay taxes is not penal. It is a statutory liability, *quasi*-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or *indebitatus assumpsit*. *United States* v. *Chamberlin*, 219 U. S. 250; *Price* v. *United States*, 269 U. S. 492; *Savings Bank* v. *United States*, 19 Wall. 227; and see *Stockwell* v. *United States*, 13 Wall. 531, 542; *Meredith* v. *United States*, 13 Pet. 486, 493. This was the rule established in the English courts before the Declaration of Independence. *Attorney General* v. *Weeks*, Bunbury's Exch. Rep. 223; *Attorney General* v. *Jewers and Batty*, *id.*, 225; *Attorney General* v. *Hatton*, *id.*, 262; *Attorney General* v. —, 2 Ans. R. 558; See Comyn's Digest (Title "Dett," A, 9); 1 Chitty on Pleading, 123; cf. *Attorney General* v. *Sewell*, 4 M. & W. 77.

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[1] Harsy v. Daniel, 2 Lev. 161; 1 Marsh 284; Prince v. Nicholson, 5 Taunt. 667; Hall v. Odber, 11 East. 118; Lyman v. Brown, 2 Curtis 559, 561; Taylor v. Bryden, 8 Johns. 173; Russell v. Smyth, 9 M. & W. 810; Andrews v. Montgomery, 19 Johns. 162; Boston R. R. Co. v. Holt, 14 Vt. 92; Carter v. Crews, 2 Port. (Ala.) 81; Belford v. Woodward, 158 Ill. 122; Cole v. Driscoll, 1 Blatchf. (Ind.) 16; see 1 Chitty on Pleading, 115; 2 Freeman on Judgments, § 1515.

The objection that the courts in one state will not entertain a suit to recover taxes due to another or upon a judgment for such taxes is not rightly addressed to any want of judicial power in courts which are authorized to entertain civil suits at law. It goes not to the jurisdiction but to the merits, and raises a question which district courts are competent to decide. See *Illinois Central R. R.* v. *Adams*, 180 U. S. 28; *General Investment Company* v. *New York Central R. R. Co.*, 271 U. S. 228, 230; No. 13, *Becker Steel Company* v. *Cummings, Attorney General*, decided November 11, 1935.

That defense is without merit if full faith and credit must be given the judgment. But even if full faith and credit is not commanded there is nothing in the Constitution and laws of the United States which requires a court of a state to deny relief upon a judgment because it is for taxes. A state court, in conformity to state policy, may, by comity, give a remedy which the full faith and credit clause does not compel. *Young* v. *Masci*, 289 U. S. 253; *Bond* v. *Hume*, 243 U. S. 15; cf. *Tennessee Coal, Iron & R. R. Co.* v. *George*, 233 U. S. 354; *Clark Plastering Co.* v. *Seaboard Surety Co.*, 259 N. Y. 424; *Herrick* v. *Minn. & St. Louis Ry. Co.*, 31 Minn. 11; *Healy* v. *Root*, 11 Pick. (Mass) 389; *Schuler* v. *Schuler*, 209 Ill. 522. A suit to recover taxes due under the statutes of another state has been allowed without regard to the compulsion of the full faith and credit clause. *Holshouser* v. *Copper Co.*, 138 N. C. 248, 50 S. E. 650. The privilege may be extended by statute. See N. Y. Laws, 1932, c. 333. Where suits to enforce the laws of one state are entertained in the courts of another on the principle of comity, the federal district courts sitting in that state may entertain them and should if they do not infringe federal law or policy. *Union Trust Co.* v. *Grossman*, 245 U. S. 412, 418; *Bond* v. *Hume*, *supra*; *Northern Pacific R. R.* v. *Babcock*, 154 U. S. 190, 197, 198; *Dimick* v. *Railroad*, 103 U. S. 11; see *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 161.

2. The faith and credit required to be given to judgments does not depend on the Constitution alone. Article IV, § 1 not only commands that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state" but it adds "Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof." And Congress has exercised this power,

by Act of May 26, 1790, Ch. 11, 28 U. S. C. 687, which provides the manner of proof of judgments of one state in the courts of another, and specifically directs that judgments "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Such exception as there may be to this all-inclusive command is one which is implied from the nature of our dual system of government, and recognizes that consistently with the full faith and credit clause there may be limits to the extent to which the policy of one state, in many respects sovereign, may be subordinated to the policy of another. That there are exceptions has often been pointed out, *Broderick* v. *Rosner*, 294 U. S. 629, 642; *Alaska Packers Assn.* v. *Industrial Accident Commission*, 294 U. S. 532, 546; *Bradford Electric Light Co.* v. *Clapper*, *supra*, 160; *Huntington* v. *Attrill*, 146 U. S. 657, 663; *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 293; and in some instances decided. See *Haddock* v. *Haddock*, 201 U. S. 562; *Maynard* v. *Hill*, 125 U. S. 190; *Hood* v. *McGehee*, 237 U. S. 611; *Olmsted* v. *Olmsted*, 216 U. S. 386; *Fall* v. *Eastin*, 215 U. S. 1. Without attempting to say what their limits may be we assume for present purposes that the command of the Constitution and of the statute is not all-embracing and direct our inquiry to the question whether a state to which a judgment for taxes is taken may have a policy against its enforcement meriting recognition as a permissible limitation upon the full faith and credit clause. Of that question this Court is the final arbiter. See *Alaska Packers Association* v. *Industrial Accident Commission*, *supra*, 547; *Bradford Electric Light Co.* v. *Clapper*, *supra*, 157-162.

It is said that in answering it the Court should examine the record which supports the judgment and refuse to give credit to the judgment, if the cause of action upon which it is founded is one which it would not enforce, and appellee urges that a suit for taxes imposed by state statute will not be entertained outside the taxing state. It has often been said,[2] and in a few cases held,[3] that stat-

[2] Henry v. Sargeant, 13 N. H. 321; Gulledge Bros. Lbr. Co. v. Wenatchee Land Co., 122 Minn. 266; Colorado v. Harbeck, 232 N. Y. 71; James & Co. v. Second Russian Insurance Co., 239 N. Y. 248, 257; Matter of Martin, 255 N. Y. 359, 362; Beadall v. Moore, 199 A. D. 502; cf. Municipal Council of Sydney v. Bull [1909], 1 K. B. 7; Queen of Holland v. Drukker [1928], Ch. 877; Attorney General of Canada v. Schulze & Co., 9 Sc. L. T. Rep. 4.

[3] Moore v. Mitchell, 30 F. (2d) 600 (C. C. A. 2d); affirmed on another ground, 281 U. S. 18; Matter of Anita Bliss, 121 Misc. 773; Estate of Martin, 136 Misc. 51; Maryland v. Turner, 75 Misc. 9. Contra, Holahouser, v. Copper Co., 138 N. C. 248.

utes imposing taxes are not entitled to full faith and credit. Other obligations to pay money arising under the statutes of one state must be given recognition in courts of another. *Converse* v. *Hamilton*, 224 U. S. 243; *Broderick* v. *Rosner, supra; Bradford Electric Light Co.* v. *Clapper, supra.* But it is insisted that to this rule taxing statutes constitute an exception, analogous to that relating to penal laws, because the courts of one state should not be called upon to scrutinize the relations of a foreign state with its own citizens, such as are involved in its revenue laws, and thus commit the state of the forum to positions which might be seriously embarrassing to itself or its neighbors. See *Moore* v. *Mitchell*, 30 F. (2d) 600, 602, 604; Beale, Conflict of Laws, § 610.1.

Whether one state must enforce the revenue laws of another remains an open question in this Court. See *Moore* v. *Mitchell*, 281 U. S. 18, 24. But we do not stop to inquire whether the considerations which have been thought to preclude the enforcement of the penal laws of one state in the courts of another are applicable to taxing statutes; or whether the mere possibility of embarrassment in their enforcement should stay the hand of the court of another state in cases where in fact such embarrassment will not occur. For present purposes we will assume that the courts of one state are not required to entertain a suit to recover taxes levied under the statutes of another and confine our inquiry to the single question whether they must nevertheless give full faith and credit to judgments for such taxes.

A cause of action on a judgment is different from that upon which the judgment was entered. In a suit upon a money judgment for a civil cause of action the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money in the nature of a debt upon a specialty. Recovery upon it can be resisted only on the grounds that the court which rendered it was without jurisdiction, *Pennoyer* v. *Neff*, 95 U. S. 714; *D'Arcy* v. *Ketchum*, 11 How. 165; *Tilt* v. *Kelsey*, 207 U. S. 43; or that it has ceased to be obligatory because of payment or other discharge; *Anderson* v. *Clark*, 70 Ga. 362; *Haggerty* v. *Amory*, 7 Allen (Mass.) 458; *First Nat. Bank* v. *Hahn*, 197 Mo. App. 593; *Revere C. Co.* v. *Dimock*, 90 N. Y. 33; or that it is a cause of action for which the state of the forum has not provided a court, *Anglo-American Provision Co.* v. *Davis Provision Co.*, ~~290 U. S. 215~~; compare *Kinney* v. *Supreme*

Copper

No. 1, 191 U.S. 373

Lodge, 252 U. S. 411, unless it is compelled to do so by the privileges and immunities clause; compare *Douglas* v. *N. Y., N. H. & H. R. R. Co.*, 279 U. S. 377; *McKnett* v. *St. Louis and S. F. Ry. Co.*, 292 U. S. 230, and *Broderick* v. *Rosner, supra;* or possibly because procured by fraud, compare *Christmas* v. *Russell*, 5 Wall. 290; *Maxwell* v. *Stewart*, 22 Wall. 77; *Hanley* v. *Donoghue*, 116 U. S. 1; *Simmons* v. *Saul*, 138 U. S. 439, with *Webster* v. *Reid*, 11 How. 437; *McNitt* v. *Turner*, 16 Wall. 352; *Cole* v. *Cunningham*, 133 U. S. 107, 112.

Trial of these issues, even though the judgment be for taxes incurred under the laws of another state, requires no scrutiny of its revenue laws or of relations established by those laws with its citizens, and calls for no pronouncement upon the policy of a sister state. It involves no more embarrassment than the interstate rendition of fugitives from justice, the constitutional command for which is no more specific than that requiring full faith and credit. Foreign judgments are not liens and are not entitled to execution in the state to which they are brought. See *M'Elmoyle* v. *Bailey*, 13 Pet. 312; *Cole* v. *Cunningham, supra*, 112; cf. *Gasquet* v. *Fenner*, 247 U. S. 16; *Sistare* v. *Sistare*, 218 U. S. 1, 26. They can no more demand priority over domestic claims for taxes than a judgment upon a simple contract debt, which is equally a binding obligation of the judgment debtor where rendered, and to which full faith and credit must be accorded.

We can perceive no greater possibility of embarrassment in litigating the validity of a judgment for taxes and enforcing it than any other for the payment of money. The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin. That purpose ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged. In the circumstances here disclosed no state can be said to have a legitimate policy against payment of its neighbor's taxes, the obligation of which has been judicially established by courts to whose judgments in practically every other instance it must give full faith and credit. Compare *Fauntleroy* v. *Lum, supra.*

In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded; that considerations of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it. Full faith and credit is required to be given to the judgment of another state although the original suit on which it was based arose in the state of the forum and was barred there by the Statute of Limitations when the judgment was rendered; *Christmas* v. *Russell*, 5 Wall. 290; *Roche* v. *McDonald*, 275 U. S. 449; and where the original suit was upon a gambling contract invalid by the law of the forum where it was made; *Fauntleroy* v. *Lum*, *supra*. It was required where the judgment was for wrongful death, although it was thought that the statute giving the recovery was not entitled to full faith and credit. *Kenney* v. *Supreme Lodge*, *supra*; compare *Converse* v. *Hamilton*, *supra*; *Broderick* v. *Rosner*, *supra*; see also *American Express Co.* v. *Mullen*, 212 U. S. 311.

Appellee especially relies upon the statement in the opinion of this Court in *Wisconsin* v. *Pelican Insurance Co.*, *supra*, that (292, 293):

"The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules, which regard the original claim as merged in the judgment and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which a judgment is presented for affirmative action, (while it cannot go behind the judgment for the purpose of examining into the validity of the claim,) from ascertaining whether the claim is one of such a nature that the court is authorized to enforce it.

In that case it was held that this Court was without original jurisdiction of a suit brought by Wisconsin to recover upon a judgment obtained in its own courts for a penalty imposed by its statutes for the failure of an insurance company to file an annual report. So far as the opinion can be taken to suggest that full faith and credit is not required with respect to a judgment unless the original cause of action would have been entitled to like credit, it is inconsistent with decisions of this Court already noted and was discredited in *Fauntleroy* v. *Lum*, *supra*, 36, 37, and *Kenney* v. *Supreme Lodge*, *supra*, 414.

The precise question now presented appears to have been decided in only a single case, *New York* v. *Coe Manufacturing Co.*, 112 N. J. L. 536. In holding in that case that a New York judgment

for taxes was entitled to full faith and credit the New Jersey Court of Errors and Appeals pointed out that questions of the construction and application of the New York tax laws were not the subject of litigation in New Jersey since they had been conclusively determined by the New York judgment, which established liability for the tax.[4]

We conclude that a judgment is not to be denied full faith and credit in state and federal courts merely because it is for taxes.

We intimate no opinion whether a suit upon a judgment for an obligation created by a penal law, in the international sense, see *Huntington* v. *Attrill, supra,* 677, is within the jurisdiction of the federal district courts, or whether full faith and credit must be given to such a judgment even though a suit for the penalty before reduced to judgment could not be maintained outside of the state where imposed. See *Wisconsin* v. *Pelican Insurance Co., supra.*

The findings of the Wisconsin court, upon which the judgment in the present case was predicated, are appended as an exhibit to the certificate. They indicate that the judgment included interest and a "penalty" of 2% for delinquency in payment, but the record does not disclose that the nominal penalty arose under a penal law or is of such a nature as to preclude suit to recover it outside the state of Wisconsin. See *Huntington* v. *Attrill,* 146 U. S. 657, 667, et seq. The certificate and question are framed on the assumption that it is not. The judgment is stated to be for taxes.

The question is answered "yes."

Mr. Justice McREYNOLDS and Mr. Justice BUTLER think that the question should be answered "no."

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[4] The Restatement of Conflict of Laws of the American Law Institute, 1934, declares:

§ 610. "No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interest."

This is stated by Comment (c) to refer to claims for taxes. It also declares:

§ 443. "A valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the law of the foreign state as a method of furthering its own governmental interests will not be enforced."

Comment (b) states that the enforcement of such a judgment is not required by the full faith and credit clause. But illustration 4 states that a state judgment against a foreign corporation for a stipulated fee for the privilege of doing business within the state is entitled to full faith and credit.

These conclusions should be compared with New York v. Coe Manufacturing Co., *supra.* See Beale, Conflict of Laws, §§ 443.1, 610.2.